

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER W911LJ-4226-2002		PAGE 1 OF 61	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER W81GYE-04-R-0053	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME ROBIN THOMAS			b. TELEPHONE NUMBER (No Collect Calls) 703-428-2061		6. SOLICITATION ISSUE DATE 19-Oct-2004
9. ISSUED BY SDDC CONTRACTING CENTER SDAQ-G GLOBAL INTERMODAL DIST DIV 200 STOVALL ST, RM 12S67 ALEXANDRIA VA 22332-5000  TEL: 703-428-3304 FAX: 703-428-3325		CODE W81GYEB11	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100 % FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: 483111 SIZE STANDARD: 500			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  13b. RATING  14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	
15. DELIVER TO  <div style="text-align: center; font-weight: bold;">SEE SCHEDULE</div>			16. ADMINISTERED BY				
17a. CONTRACTOR/ OFFEROR   TEL. FACILITY CODE			18a. PAYMENT WILL BE MADE BY				
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SCHEDULE						
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED.						ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		31c. DATE SIGNED	
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)  TEL: EMAIL:			

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS (CONTINUED)						PAGE 2 OF 61
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	SEE SCHEDULE					
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____						
32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE				32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
				32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
33. SHIP NUMBER		34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT		37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		
38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	40. PAID BY			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			42a. RECEIVED BY (Print)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER			41c. DATE			
			42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION  
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STANDARD FORM 1449 (REV 4/2002) BACK  
Prescribed by GSA  
FAR (48 CFR) 53.212

## Section SF 1449 - CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	GTMO SOLICITATION FFP GTMO DEDICATED OCEAN SHIPPING SERVICESFFP- TRANSPORTATION SERVICES FROM PORT OF JACKSONVILLE, FL TO GUANTANAMO BAY CUBA FOR A BASE ONE (1) YEAR FIRM PERIOD. EFFECTIVE 17 APR 2005 THROUGH 16 APR 2006. SEE THE CARES I I SYSTEM FOR THE INDIVIDUAL RATES, ORIGIN AND DESTINATION, COMMODITIES, AND ESTIMATED QUANTITIES, to support DOD Dedicated Intermodal Transportation requirements between the U.S. and NAVSTA Guantanamo Bay Cuba and return... PURCHASE REQUEST NUMBER: W911LJ-4226-2002	1	Lot		
NET AMT					

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002 OPTION	GTMO SOLICITATION FFP OPTION YEAR ONE(1) GTMO DEDICATED OCEAN SHIPPING SERVICES FFP- TRANSPORTATION SERVICES FROM PORT OF JACKSONVILLE, FL TO GUANTANAMO BAY CUBA EFFECTIVE 17 APR 2006 THROUGH 16 APR 2007 . SEE THE CARES I I SYSTEM FOR THE INDIVIDUAL RATES, ORIGIN AND DESTINATION, COMMODITIES, AND ESTIMATED QUANTITIES, to support DOD Dedicated Intermodal Transportation requirements between the U.S. and NAVSTA Guantanamo Bay Cuba and return. PURCHASE REQUEST NUMBER: W911LJ-4226-2002	1	Lot		
NET AMT					

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		1	Lot		
OPTION	GTMO SOLICITATION FFP OPTION YEAR TWO (2) GTMO DEDICATED OCEAN SHIPPING SERVICES FFP- TRANSPORTATION SERVICES FROM PORT OF JACKSONVILLE, FL TO GUANTANAMO BAY CUBA EFFECTIVE 17 APR 2007 THROUGH 16 APR 2008 . SEE THE CARES I I SYSTEM FOR THE INDIVIDUAL RATES, ORIGIN AND DESTINATION, COMMODITIES, AND ESTIMATED QUANTITIES, to support DOD Dedicated Intermodal Transportation requirements between the U.S. and NAVSTA Guantanamo Bay Cuba and return. PURCHASE REQUEST NUMBER: W911LJ-4226-2002				

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 NET AMT

FOB: Destination

## INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	Destination	Government	Destination	Government
0002	Destination	Government	Destination	Government
0003	Destination	Gpvernment	Destination	Government

## DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 17-APR-2005 TO 16-APR-2006	N/A	FOB: Destination	
0002	POP 17-APR-2006 TO 16-APR-2007	N/A	FOB: Destination	
0003	POP 17-APR-2007 TO 16-APR-2008	N/A	FOB: Destination	

## CLAUSES INCORPORATED BY REFERENCE

52.203-2	Certificate Of Independent Price Determination	APR 1985
52.203-11	Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions	APR 1991
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 2003
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-6	Data Universal Numbering System (DUNS) Number	OCT 2003
52.212-1	Instructions to Offerors--Commercial Items	JAN 2004
52.212-4	Contract Terms and Conditions--Commercial Items	OCT 2003
52.217-5	Evaluation Of Options	JUL 1990
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.232-36	Payment by Third Party	MAY 1999
52.237-3	Continuity Of Services	JAN 1991
52.242-13	Bankruptcy	JUL 1995
52.246-4	Inspection Of Services--Fixed Price	AUG 1996
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7002	Display Of DOD Hotline Poster	DEC 1991
252.204-7000	Disclosure Of Information	DEC 1991
252.204-7001	Commercial And Government Entity (CAGE) Code Reporting	AUG 1999
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.212-7000	Offeror Representations and Certifications- Commercial Items	NOV 1995
252.212-7001	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items	JAN 2004
252.223-7002	Safety Precautions For Ammunition And Explosives	MAY 1994
252.223-7003	Changes In Place Of Performance--Ammunition And Explosives	DEC 1991
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	APR 1993
252.242-7000	Postaward Conference	DEC 1991
252.243-7001	Pricing Of Contract Modifications	DEC 1991
252.243-7002	Requests for Equitable Adjustment	MAR 1998

## CLAUSES INCORPORATED BY FULL TEXT

52.211-11 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$250.00 per container or equivalent FEU per day.

(b) If the Government terminates this contract in whole or in part under the Default--Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default--Fixed-Price Supply and Service clause in this contract.

(End of clause)

## 52.212-2 EVALUATION--COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

Addendum to 52.212-2

### **I. General Evaluation**

A. Contract awards will be made in accordance with the terms of FAR 52.212-2, Evaluation – Commercial Items and the provisions contained herein. All rates will be examined for price reasonableness in accordance with FAR Part 15.402

B. Proposals submitted shall demonstrate the offeror's technical capability to provide the services for all origin points listed to GTMO. All rates requested in the proposal shall be provided.

C. The Government reserves the right to reject any offer of service where the Government determines that the technical capability to serve the route index or indices as stated in the contractor's offer is less than the carrier's service offered commercially.

D. The Government reserves the right to reject any offer in whole or in part under this RFP that does not comply with the material requirements of this solicitation. Failure to comply with any of the material requirements of this solicitation, including submission of all applicable representations and certifications may be determined to be grounds for the Government to reject offers as technically unacceptable in the event the contract is awarded on initial offers/proposals.

E. U.S. Flag Service offers will be evaluated for compliance with the Cargo Preference Act of 1904 (10 U.S.C. 2631, as amended.) Evaluation of Voluntary Intermodal Sealift Agreement priorities will be in accordance with the Department of Transportation, Maritime Administration, VISA, Section III. General, Paragraph 3., as published in the Federal Register, Vol 68, No. 37, Tuesday, February 25, 2003 / Notices.

F. The Government may accept some or all rates or services initially offered, without discussion of those rates or services. If negotiations are conducted, they may be limited to certain rates or service specifically identified in

writing by the contracting officer to the offerors. Thereafter, offers will be notified of the close of negotiations and the opportunity to submit a final proposal revision (FPR).

G. This is a Best Value acquisition. A tradeoff analysis will be performed between price and non-price factors.

## **II. Voluntary Intermodal Sealift Agreement (VISA) Priorities (Readiness) Evaluation**

Offers responsive to this solicitation that are determined to have the required technical capability shall be by U.S. Flag, Voluntary Intermodal Sealift Agreement (VISA) participants and Jones Act qualified vessels.

## **III. Basis For Award**

A. Contract award, if any, will be made to that responsible offeror whose offer provides the best overall value to the Government, technical factors, price, and other factors considered. Price considerations will be approximately equal in weight to the sum of all non-price evaluation factors. All rates will be examined for price reasonableness. The Contracting Officer will not award a contract to any offeror proposing any rate that is not fair and reasonable in accordance with FAR 15.402. The Contracting Officer will also make a determination if each rate offered is in compliance with the Cargo Preference Act of 1904 (10 US Section 2631).

B. Relative Order of Importance Terminology. An evaluation of all offers will be made in accordance with the criteria set forth below. Evaluation criteria consist of factors and subfactors. In order to provide the offeror with an understanding of the significance assigned by the Government, the criteria are assigned a relative order of importance. The following terminology is used:

1. Significantly More Important. The criterion is substantially more important than another criterion. Criterion is given far more consideration than another criterion.
2. More Important. The criterion is greater in value than another criterion, but not as much as a significantly more important criterion. Criterion is given more consideration than another criterion.
3. Approximately Equal. The criterion is nearly the same in value as another criterion; any difference is very slight.

C. The basis of award will be made to the proposal(s) determined to be the most beneficial to the Government using a tradeoff (i.e., best value) process, with appropriate consideration given to the following three (3) evaluation factors and their respective sub-factors.

### **1. FACTOR - Technical Capability**

#### **SUB-FACTORS**

- (a) Reliability of Service
- (b) Equipment
- (c) Management Approach
- (d) Electronic Data Interchange (EDI)

### **2. FACTOR - Past Performance**

#### **SUB-FACTORS**

- (a) Quality of Service
- (b) Schedule
- (c) Business Relations
- (d) Management of Key Personnel

### 3. FACTOR – Price

#### D. Relative Order of Importance of the Subfactors within the Evaluation Factors

1. Technical Capability — Technical capability Subfactors (a) and (b) are equal in importance and each is individually more important than Subfactors (c) and (d). Subfactor (c) is more important than Subfactor (d).
2. Past Performance — Past Performance Subfactors (a) and (b) are equal in importance. Each is individually more important than Subfactors (c) and (d). Subfactor (c) is more important than Subfactor (d).

**E. Relative Order of Importance of the Factors.** Of the two non-price evaluation factors, the Technical Capability Factor is more important than the Past Performance Factor. Together the non-price factors are approximately equal to the Price Factor.

**F. Evaluation Approach** - The technical proposal is to be presented by each offeror in accordance with FAR Clause 52.212-1, Instructions to Offerors, Commercial Items and any applicable addendums. The offeror's proposal shall clearly demonstrate that the offeror understands the requirement identified in the statement of work contained in the RFP. Simply stating that the offeror understands, or rephrasing statements made in the statement of work, will not be considered demonstration of understanding or identification of how the contractor will perform the task.

**G.** Within the technical factor, the contractor will be evaluated on the following elements (sub factors):

- 1. Reliability of Service.** The offeror must show how they will maintain consistency of sailings offered over the trade route and intervals between sailings. The offeror must also propose a schedule for the first year of operation. Offerors must demonstrate how transit times for vessel sailings between JaxPort and GTMO will be met.
- 2. Equipment.** The offeror must present information on how they will provide and maintain suitable and sufficient intermodal and vessel equipment to meet all projected movement requirements and adequately safeguard and protect from loss and damage. The offeror must demonstrate the capability to have equipment pools in place to meet the requirements of high-demand shippers.
- 3. Management Approach.** The offeror must show how the carrier will implement this contract and manage risk in movements and annual operations demonstrating how the Carrier intends to respond to problems such as, but not limited to, Force Majeure. The offeror must show how they will respond to queries on a timely basis by personnel knowledgeable with DOD business, provide advice to improve service and schedule in order to limit Government exposure to overall transportation cost, proactively manage DOD shipments to identify potential problems and to provide performance feedback. The offeror must describe contingency and/or recovery plans ready to implement in case of operational problems, such as vessel breakdown, vessel delay due to inclement weather, and equipment failure. **These contingency and/or recovery plan will detail what will be implemented in order to maintain a scheduled liner service with regular sailings, even in the event of Force Majeure.**
- 4. EDI Capability.** The offeror must describe their capability to provide all the required EDI transactions/event reports as described in the solicitation, to include the events for EDI 315 status reports.

**H. Past Performance Evaluation** — Past performance information will be submitted in accordance with the instructions contained in FAR Clause 52.212-1 and the Addendum. The offeror should provide information describing the ability to meet performance requirements of previous contracts with the government. Proposals should address the following:

- 1. Quality of Service** – The offeror must provide information to demonstrate how they have maintained a quality level of service in other contracts.



**2. Schedule** – The offeror must provide information to demonstrate how they have maintained their schedule in other contracts/services.

**3. Business Relations** – The offeror must provide information to demonstrate how they maintain business relations on other contracts/services.

**4. Management of Key Personnel** – The offeror must provide information to demonstrate how management of key personnel in other business/service has affected the services.

**I. Price Evaluation** - The estimated quantities listed in CARES SM II module will be considered as the quantities to be shipped or service to be performed between each origin and destination. These estimated quantities are provided for the purpose of evaluating offers, and for no other purpose. Price evaluation will be based on the total estimated cost, including the option periods. This shall be calculated by pricing out the categories and volumes of cargo shown in CARE system and the appropriate rates offered by the carrier in the CARE system as set forth below:

1. Containerized Cargo - Containerized cargo will be priced by multiplying the rate per container proposed for each type container size in CARE II SM by the projected total contract requirement expressed in number of containers for that type of container (dry, open top, and refrigerated) for each location.

2. Breakbulk Cargo - Breakbulk cargo will be priced by multiplying the rate per measurement ton by the projected total contract requirement for that type cargo.

3. Accessorials – Accessorial charges will be evaluated for price reasonableness based on price analysis as defined by the FAR Subpart 15.404-1. Accessorial charges will not be included in the total evaluated price.

4. Inland Mileage Charges - Rates for inland mileage charges will be evaluated for price reasonableness based on price analysis as defined by the FAR Subpart 15.404-1. Mileage charges will not be included in the total evaluated price. See Addendum to 52.212-1 Section IV, for additional information on mileage rate offers.

**J. Adjectival Rating Description.** To ensure a thorough and fair evaluation, it is imperative that the scoring and ratings be consistently applied across proposals and across evaluation factors. The following adjectival ratings will be used to rate each evaluation factor and subfactor.

**Exceptional** — Proposal meets and exceeds many contractual requirements to the Government's benefit. There are no weaknesses, which would adversely affect performance. The proposal has a very high probability of meeting or exceeding the Government's requirements in an exceptionally effective and efficient manner with little or no risk.

**Very Good (VG)** — Proposal meets and exceeds some contractual requirements to the Government's benefit. There are no significant weaknesses, which would adversely affect performance. The proposal has a very good probability of meeting or exceeding the Government's requirements in an effective and efficient manner with little or no risk.

**Satisfactory** — Proposal meets contractual requirements. The offeror's proposal is responsive to all aspects of the solicitation. The proposal meets the requirements of the solicitation and has a probability of success. Any minor weaknesses can be readily corrected. The proposal satisfies the solicitation requirements with limited technical risk.

**Marginal** — Proposal does not meet some contractual requirements. The proposal has a reasonable chance of being corrected or expanded without a complete revision. In its current form, the proposal poses a significant risk in meeting the solicitation requirements.

**Unsatisfactory** — Proposal does not meet most contractual requirements and recovery is not likely in a timely manner. The proposal is seriously deficient with no reasonable likelihood of being made technically acceptable without major revisions equal to the submission of a new proposal.

**Neutral** — This requirement is implemented at FAR Part 15.305(a)(2)(iv): In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available; the offeror may not be evaluated favorably or unfavorably on past performance. If such a case truly exists the offeror shall be given a Neutral in their Past Performance evaluation.

(End of clause)

#### 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (MAY 2002)

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process of penalties.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of its stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

\_\_\_ TIN:-----

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

\_\_\_ Corporate entity (tax-exempt);

\_\_\_ Government entity (Federal, State, or local);

\_\_\_ Foreign government;

\_\_\_ International organization per 26 CFR 1.6049-4;

\_\_\_ Other-----

(5) Common parent.

\_\_\_ Offeror is not owned or controlled by a common parent;

\_\_\_ Name and TIN of common parent:

Name-----

TIN-----

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it ( ) is, ( ) is not a small business concern.

(2) Veteran-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, for general statistical purposes, that it ( ) is, ( ) is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it ( ) is, ( ) is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it ( ) is, a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

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(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. (Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.)

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it ( ) is, ( ) is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Average Annual

Number of Employees Gross Revenues

\_\_\_ 50 or fewer \_\_\_ \$1 million or less

\_\_\_ 51 - 100 \_\_\_ \$1,000,001 - \$2 million

\_\_\_ 101 - 250 \_\_\_ \$2,000,001 - \$3.5 million

\_\_\_ 251 - 500 \_\_\_ \$3,500,001 - \$5 million

\_\_\_ 501 - 750 \_\_\_ \$5,000,001 - \$10 million

\_\_\_ 751 - 1,000 \_\_\_ \$10,000,001 - \$17 million

\_\_\_ Over 1,000 \_\_\_ Over \$17 million

(9) (Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns or FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

(i) General. The offeror represents that either--

(A) It ( ) is, ( ) is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It ( ) has, ( ) has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business

concern that is participating in the joint venture. (The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.)

(10) HUBZone small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It ( ) is, ( ) is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating on the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246--

(1) Previous Contracts and Compliance. The offeror represents that--

(i) It ( ) has, ( ) has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation; and

(ii) It ( ) has, ( ) has not, filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that--

(i) It ( ) has developed and has on file, ( ) has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It ( ) has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act--Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act--North American Free Trade Agreement--Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

NAFTA Country or Israeli End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) (2) Buy American Act--North American Free Trade Agreements--Israeli Trade Act Certificate, Alternate I (May 2002). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

Canadian End Products:

Line Item No.

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(List as necessary)

(3) Buy American Act--North American Free Trade Agreements--Israeli Trade Act Certificate, Alternate II (May 2002). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No.

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Country of Origin

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(List as necessary)

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--



(1) ( ) Are, ( ) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) ( ) Have, ( ) have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) ( ) Are, ( ) are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed End Product

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Listed Countries of Origin

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(2) Certification. (If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.)

( ) (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

( ) (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

#### 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (APR 2004)

(a) The Contractor shall comply with the following Federal **Acquisition Regulation** (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

  X   (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

       (2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999) (U.S.C. 657a).

       (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (U.S.C. 657a).

       (4) (i) 52.219-5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

       (ii) Alternate I (MAR 1999) to 52.219-5.

       (iii) Alternate II to (JUNE 2003) 52.219-5.

       (5) (i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

       (ii) Alternate I (OCT 1995) of 52.219-6.

       (iii) Alternate II (MAR 2004) of 52.219-6.

       (6) (i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

       (ii) Alternate I (OCT 1995) of 52.219-7.

       (iii) Alternate II (MAR 2004) of 52.219-7.

       (7) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637 (d)(2) and (3)).

       (8) (i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).

       (ii) Alternate I (OCT 2001) of 52.219-9

       (iii) Alternate II (OCT 2001) of 52.219-9.

       (9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).

       (10) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

       (ii) Alternate I (JUNE 2003) of 52.219-23.

       (11) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

       (12) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

- ☒ (13) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
- ☒ (14) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2004) (E.O. 13126).
- ☒ (15) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- ☒ (16) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
- ☒ (17) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- ☒ (18) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- ☒ (19) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- \_\_\_\_ (20)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
- \_\_\_\_ (ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- \_\_\_\_ (21) 52.225-1, Buy American Act--Supplies (JUNE 2003) (41 U.S.C. 10a-10d).
- \_\_\_\_ (22)(i) 52.225-3, Buy American Act--Free Trade Agreements--Israeli Trade Act (JAN 2004) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78).
- \_\_\_\_ (ii) Alternate I (JAN 2004) of 52.225-3.
- \_\_\_\_ (iii) Alternate II (JAN 2004) of 52.225-3.
- \_\_\_\_ (23) 52.225-5, Trade Agreements (JAN 2004) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- \_\_\_\_ (24) 52.225-13, Restrictions on Certain Foreign Purchases (Dec 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of Treasury).
- \_\_\_\_ (25) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).
- \_\_\_\_ (26) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).
- \_\_\_\_ (27) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_\_ (28) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_\_ (29) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).
- \_\_\_\_ (30) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).
- ☒ (31) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

\_\_\_\_ (32) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

\_\_\_\_ (33)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

\_\_\_\_ (ii) Alternate I (APR 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

\_\_\_\_ (1) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, et seq.).

\_\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business

concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### 52.214-16 MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of 120 calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: \_\_\_\_\_ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

(End of clause)

#### 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Firm Fixed Price (FP) Requirements Type contract resulting from this solicitation.

(End of clause)

## 52.216-18 ORDERING. (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from 17 April 2005 through 16 April 2008 .

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

## 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1 FEU or MT , the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor's maximum cargo volume is one full vessel capacity per minimum sailing outbound or inbound:

(1) Any order for a single item in excess of capacity of the vessel ;

(2) Any order for a combination of items in excess of the capacity of the vessel; or

(3) A series of orders from the same ordering office within 3 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within one (1) day after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

## 52.216-21 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in

orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **16 April 2008**.

(End of clause)

#### 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within sixty (60) days.

(End of clause)

#### 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within forty-five (45) days ; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least ninety (90) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed **forty two (42) months and/or 3 years and 6 months**.

(End of clause)

52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Military Surface Deployment Distribution Command (SDDC), 200 Stovall Street, Room 12S54, ATTN: William Mills, Alexandria, Virginia 22332-5000.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.sddc.army.mil/frontDoor/0,1383,OID+5-----,00.html>

<http://farsite.hill.af.mil>

<http://www.arnet.gov/far>

(End of provision)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[  
<http://www.sddc.army.mil/frontDoor/0,1383,OID+5-----,00.html>

<http://farsite.hill.af.mil>

<http://www.arnet.gov/far>

(End of clause)



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## 1.0 INTRODUCTION/BACKGROUND

### 1.1 Intent of Acquisition

The purpose of this acquisition is to contract for a dedicated liner service for containerized and break bulk cargo between U.S. Naval Station Guantanamo Bay, Cuba (GTMO) and Jacksonville, Florida (JaxPort). All services for required cargo will be provided according to the rates established in CARE II –SM.

### 1.2 Description of GTMO Environment

1.2.1 Physical Characteristics/Equipment. GTMO is a United States Government controlled facility. The reconstructed GTMO pier supports single and dual axles up to a maximum of 500 pounds per square foot load-bearing capacity. No Government crane, ramp, yard tractors, or any other equipment is available at NAVSTA GTMO for use by the Carrier. Water depths at pier side are normally 34 feet. Harbor seas between one to three feet are not unusual. All transportation of and intermodal equipment to be furnished at GTMO is at Carrier's expense.

1.2.2.1 Port Services. Port services in GTMO are contractor operated. Barge/vessel discharge and loading operations can be conducted 24 hours if prior authorization has been approved from the Quality Assurance Evaluator (QAE). Discharge and loading operations will normally be conducted, as required, on recognized U.S. Holidays. No bunkers are available at the port. There are no Government stevedore services available.

1.2.2.1 GTMO is a minimum manned contractor-serviced port. Normal port operating hours are Mon-Fri, 0800-1600 Local Time.

1.2.2.2 One Navy Harbor Pilot and three 2000SHP Tugs are available, NAVBASE provides linehandlers. U S Navy units are the only units to receive routine BROW support. USCG and commercial vessels provide their own support.

1.2.2.3 Maximum Draft for any ship going pier-side is 34 ft.

1.2.2.4 GTMO has the following berths available for use:

Berth	Length	Depth (MLW) FT AT PIER	Notes
-------	--------	------------------------	-------

ALPHA			
West (WPA)	300	18-30	
East (EPA)	405	32	
BRAVO			
North (NWB)	531	38	CARGO OPS
South (SWB)	531	28	CARGO OPS
CHARLIE (NPC)	365	34	CARGO FUEL

1.2.2.5 Anchorages BRAVO through CHARLIE are available with depths ranging from 36 to 48 feet, and are best seen on Chart 26230.

1.2.2.6 Diesel Fuel Marine (DFM) is available at all berths via 4-inch connection at a rate of 2000 BPH. NSFO, JP5, MOGAS, and AVGAS are also available at PIER CHARLIE.

1.2.2.7 Piers are not equipped for Collection Holding and Transfer (CHY), limited truck services are available through local contractor

1.2.2.8 Oly waste disposal is available through a local contractor.

1.2.2.9 Phone lines are available on the pier. Ships must hook up own phones. For DSN service, a memo signed by the Commanding Officer with the full name, rank and the last four of personnel authorized to use DSN.

1.2.2.10 Fresh water is limited to 25 gallons per person per day. An over-limit charge will be added if over this limit. Due to water restrictions, fresh water washdowns are prohibited in port.

1.2.2.11 Contact Port Control via Channel 12 and 16 two (2) hours prior to entering and departing port.

1.2.2.12 Ship must conduct a security call to all concerned traffic, via Channel 12 and 16, thirty (30) minutes prior to arrival and before getting underway.

1.2.2.13 Ship will be met at the southern boundary and escorted by port security.

1.2.2.14 Due to the high cost of hazardous waste management from this remote location, solid hazardous waste will only be accepted for disposal from ships only if considered by the Commanding Officer as mission essential.

1.2.2.15 POC is Navy Harbor Pilot, James Cich, Email: [CICHJP@USNBGTMO.NAVY.MIL](mailto:CICHJP@USNBGTMO.NAVY.MIL), DSN 723-3960 EXT 4898, COMM 011-53-99-4898, or as revised by the Government.

## 2.0 SCOPE

### 2.1 Transportation Services

2.1.1 The Contractor (hereinafter known as "Carrier"), a Vessel Operating Common Carrier (VOCC), shall provide transportation of lawful cargo by U.S. flag ships or tug/barge systems between points in the Continental United States of America (CONUS) and GTMO, as established in Carrier Analysis and Rate Evaluation (CARE) Service Module, also known as CARE II-SM. The Carrier shall maintain a dedicated, regularly scheduled, self-sustaining liner term service on this route throughout the period of the Contract.

2.1.2 Types of cargo to be carried are military cargo, personal property, privately owned vehicles, mail, and any other cargo shipped by the Department of Defense (DoD) in the Defense Transportation System (DTS).

2.1.3 The Carrier will not transship or relay cargo. The Carrier shall provide both break bulk and intermodal container service, including terminal handling, all stevedoring, loading and discharging in CONUS and GTMO. At Jacksonville, the cargo shall be loaded and discharged at in JaxPort/Blount Island. At GTMO, the cargo shall be loaded and discharged with carrier provided equipment at Wharf Bravo, except when the COR/ACOR designates Wharf Uniform as an alternate. All inland points at GTMO are within 10 miles of the wharf.

2.1.4 The Carrier shall exclusively carry Government sponsored cargo, cargo shipped by Authorized Government Agents, and other Carrier cargo in support of Government operations in GTMO moving under this contract, unless otherwise authorized by the COR/ACOR. (see Paragraph 2.4), up to the capacity of the vessel(s) offered for use under this contract and accepted by the Contracting Officer.

2.1.5 The minimum space available to the Government for each outbound (CONUS to GTMO) or inbound (GTMO to CONUS) sailing shall be seventy-five (75) FEU's, which includes space adequate to accept a minimum of fifteen (15) refrigerated containers; and 2000 square feet of break bulk cargo. Each of the 40' spaces offered must be able to accommodate two 20' containers, or the vessel(s) must have additional space to accommodate the 20' container shortfall.

2.1.6 The Carrier shall maintain a fixed day service with a vessel sailing from the last CONUS port every other Thursday with arrival at GTMO the following Wednesday or an earlier fixed day of arrival offered by the Carrier for the contract period and agreed upon by the Contracting Officer. The service to GTMO from CONUS every fourteen (14) days shall begin on the second Thursday (tentatively 28 April 2005) after the effective date of the contract. Seventy two (72) hours prior to the first sailing of this contract, the Carrier shall provide a certificate of inspection (COI) from the U.S. Coast Guard to the Contracting Officer's Representative or Alternate Contracting Officer's Representative (COR/ACOR)

## ***2.2 On-site Office Space***

The Carrier shall provide private, on-site office space for the Government's representative at the Carrier's terminal in Jacksonville, FL. This office space will include utilities, telephone, and data usage. Only telephone and utility expenses are to be submitted as a reimbursable item by the carrier to the Government. Any other expenses related to the on-site office space shall be submitted to and approved by the Contracting Officer prior to occurrence.

## ***2.3 Regulatory Compliance***

The Carrier shall file all rates and terms of this Contract with the Federal Maritime Commission (FMC), the Surface Transportation Board (STB), and/or with other governmental agencies as may have jurisdiction over the services provided by the Carrier as set forth in this Contract. The Carrier agrees to comply with such regulations of the FMC, STB, and/or other governmental agencies as may be applicable for service to the Government in the carriage of military cargo as set forth in this Contract.

## ***2.4 Acceptance and Movement of Non-Government Cargo***

The CONUS COR/ACOR shall approve/disapprove non-government (commercial) cargo for carriage by the Carrier. Non-government cargo shall be transported by the Carrier pursuant to the Carrier's commercial contract terms and conditions which are, in no way, conditioned by this Contract. The Government assumes no responsibility or liability for non-government cargo carried by the Carrier.

Non-Government cargo moving outside this contract, moving either northbound or southbound for any single sailing by the Carrier which utilizes capacity within the Government's minimum capacity requirement as specified at Paragraph 2.1, shall reduce the Government's Average Minimum Guarantee as stated in Paragraph 4.4. The volume of non-Government cargo will be computed for each round tripvoyage. Break bulk cargoes will be converted to FEUs as stated in Paragraph 4.4.

## ***2.5 Second (2nd) POV's (or alternatively a marine conveyance)***

Military personnel assigned to GTMO are permitted to utilize the contract carrier for a movement of a 2nd POV (or alternatively a marine conveyance) on a "Space Available" basis. All rates utilized to move 2nd POVs (or alternatively a marine conveyance) on a "Space Available" basis shall be established between the individual service member and the carrier. Under no circumstances shall the Carrier allow the shipment of a 2nd POV (or alternatively a marine conveyance) shipped "Space Available" to displace any Government or Government sponsored cargo. The movement of a 2nd POV (or alternatively a marine conveyance) shall be accomplished without the provision of Government reimbursement. The Carrier shall bill the owner of the 2nd POV (or alternatively a marine conveyance) separately and waives all rights to take action against the Government to recover any sums not paid by the vehicle owner.

## **3.0 SHIPMENTS BY AUTHORIZED AGENTS OF THE GOVERNMENT**

### ***3.1 Identification of Authorized Agents***

The following provisions apply only for authorized agent shipments which include, but are not limited to, shipments of Code 3 Military by Household Goods (MHG) International Through Bill of Lading (ITGBL) Carriers, privately owned vehicles (POV) by Global POV Carriers, and Government sponsored cargo transported by Navy Carriers between Jacksonville and GTMO. The Contracting Officer will supply a list of those entities and individuals who are authorized agents for purposes of this paragraph.

### ***3.2 Booking of Cargo***

3.2.1 Shipments booked by authorized agents will be booked in accordance with the booking requirements of the resulting Contract as cited in Paragraph 4.1.

3.2.2 Shipper agrees to offer cargo for booking upon no less than five (5) working days notice prior to a port departure date unless a later time is agreed upon by the parties. The Carrier must accept an offering of cargo and notify the shipper of such acceptance, as specified in Paragraph 5.3.3.

3.2.3 The shipper will prepare a delivery order in a format as mutually acceptable by the parties. The delivery order shall be evidence of ownership and will constitute the contract of carriage issued to the Carrier.

### ***3.3 Submission of Status Reports.***

Carriers must provide reports to the authorized agent that ordered the transportation services as prescribed in Paragraph 5.12; however, rather than reporting at the TCN level, the Carrier may report by delivery order when mutually agreeable by the parties.

### ***3.4 Payment.***

The authorized agent shall make payment directly to the Carrier providing ocean service thirty days after receipt of an invoice in accordance with the Prompt Payment Act. The Carrier must invoice directly to the authorized agent for payment of services rendered to include detention. The Carrier must notify the Contracting Officer if payment is not received within forty-five (45) days after submission of invoices to the authorized agents.

## **4.0 SPECIAL INSTRUCTIONS**

### **4.1 Shipment Booking/Acceptance**

4.1.1 Issuance of Booking Number. In the absence of other established written procedures, issuance of a booking number by the Carrier through EDI, OCI or facsimile communication to the Government constitutes acceptance by the Carrier of the Government order. A Government order accepted in this manner will be deemed a "booking". The parties may subsequently agree to amendments/changes prior to delivery.

4.1.2 Submission of Invoices. Invoices shall be submitted in accordance with the Standard Billing Instructions for PowerTrack or in accordance with procedures in FAR 52.212-4(g) Invoices. The Carrier shall submit properly certified invoices or vouchers for outbound/inbound shipments, detention and other authorized charges to:

Military Surface Deployment Distribution Command (SDDC)  
Deployment Support Command  
661 Sheppard Place, Third Floor  
ATTN: WS2-3S  
Fort Eustis, VA 22304.

Invoices shall be submitted within six (6) months from completion of shipment/service. Invoices received after that time will not be certified for payment and the Carrier waives any right to payment thereafter.

4.1.3 Detention invoices shall be submitted to the CONUS COR, and shall be fully supported with documentation that depicts the entire custody chain of the Container. These documents shall be signed (legible) by the representative of the agency/organization incurring the detention.

4.1.4 Payment shall be in accordance with the PowerTrack Business rules or in accordance with the Prompt Payment Act.

### **4.2 Limitation of Government Liability**

4.2.1 Dead Freight. The Government shall not be liable for payment of dead freight.

4.2.2 Alternate Transportation. Notwithstanding any other provisions of this Contract, the Government may make alternative transportation arrangements for any cargo that the Carrier cannot meet the requirements provided by the OO for that cargo (could not meet the RDD, the characteristics of cargo are such that the cargo can not move through the Carrier's commercial terminal e.g. ammo, and inability to negotiate a reasonable rate for excepted cargo as described below). The determination to make alternative transportation arrangements shall be made by the Contracting Officer after submission of a request in writing from the OO for such arrangements.

### **4.3 Excepted Category Cargo**

Excepted category cargoes are listed below. Pursuant to FAR 52.212-2, rates for carriage may be negotiated by the Contracting Officer prior to booking. (The Contracting Officer is not required to ship excepted category cargo with the Carrier if a reasonable rate can not be negotiated). The Carrier shall not accept excepted category cargo for shipment unless a rate for its carriage has been negotiated with the Contracting Officer. Cargo categories not excepted below and for which specific rates do not appear herein, shall be carried at the applicable General Cargo rate.

- Aircraft (unboxed) including helicopters
- Bulk Cargo (not containerized in tank cars, vehicles, or containers)
- Boats (over 40 feet in length)

- Explosives (other than Category 1.4)

## **4.4 Government Obligation**

4.4.1 Volume of Cargo. A projection of cargo to move under this contract is provided under CARE II –SM. SDDC does not guarantee the completeness or accuracy of the projection, as it is provided for informational purposes only.

4.4.2 Average Minimum Guarantee (AMG). The Government shall guarantee a payment of fifty-three (53) forty foot equivalent units (FEUs) per round trip voyage based on an aggregate sequential voyage average (ASVA) for the minimum service to GTMO. In the event more frequent service is accepted by the Government, such guarantee shall be adjusted proportionally. Additional sailings will not be included for the purpose of averaging the ASVA. The calculation of the ASVA in accordance with Paragraph 4.5.2.1 below, shall determine the entitlement, if any, to such minimum payments. Such minimum payments, if any shall be rendered to the Carrier at the end of each six month period of the contract based upon a COR/ACOR certification to the PCO that the ASVA for the minimum number of voyages during the six month period falls below the minimum 53 FEUs per round trip voyage. The Government shall compensate the Carrier for each whole FEU that the ASVA falls below the 53 FEU minimum.

4.4.2.1 Application of ASVA. For purposes of calculating the rate of minimum ASVA payments, the per FEU compensation for any ASVA, during a six-month period, that falls below the guaranteed minimum of 53 FEUs per round trip voyage shall be the average of rates for one dry FEU and one reefer FEU from Jacksonville to Guantanamo port to point and from Guantanamo to Jacksonville. In calculating ASVA payments, the total of all Government and Government sponsored cargo shipped during the six-month period will be calculated. If the average number of FEUs shipped during the six-month period (both inbound and outbound) is equal to or exceeds the guaranteed minimum of 53 FEUs per round trip voyage, no ASVA will be paid by the Carrier. In the event the average number of FEUs shipped during the six-month period (both inbound and outbound) falls below the guaranteed minimum of 53 FEUs per round trip voyage, the Carrier shall be compensated for each whole FEU falling below the minimum. There will be an adjustment for each six-month cycle concerning the amount of cargo over and under the ASVA on a per specific round trip voyage. In the event that the guaranteed minimum of 53 FEUs per round trip voyage is exceeded on any specific round trip voyage during the six-month period, the amount of cargo in excess of the 53 FEU guaranteed minimum will be applied to the amount of shortfall below the 53 FEU guaranteed minimum, if any, experienced on any specific round trip voyage (during the same six-month period). The Carrier will receive a minimum ASVA payment for the six-month period, if at all, only if there is an overall shortage following this described adjustment. In calculating the average rate, no assessorial charges will be included.

4.4.2.2 Cargo Lift Certification Procedures for Payment of ASVA Minimums. The Carrier, within ten (10) working days of the end of each six month period of the contract (semi-annually), shall submit to the COR/ACOR a worksheet detailing the total cargo lifted on each voyage of the respective semi-annual period. The Carrier shall add any cargo carried on additional sailings above the minimum to the nearest minimum sailing's arrival at GTMO in the semi-annual period. Upon certification of the ASVA worksheet by the COR/ACOR (for that semi-annual period), the Carrier shall submit an invoice, if entitled, to the designated paying activity (or any subsequently identified paying office) under this contract for any certified minimum payments. Such invoice, if any, shall be accompanied by the COR/ACOR certified worksheet.

4.4.2.3 The Government undertakes to ship a minimum quantity of 1272 containers of the projected forecast movements for the one year period and for any option period exercised per year. The Government may ship additional cargo during the term of the contract up to 110% of the volume estimates for each period as the maximum amount of containers under the same rates, terms and conditions. For purposes of this contract, a shipment of cargo in a container of forty (40) foot length or longer shall be counted as one (1) FEU and a shipment of cargo in a container of twenty (20) foot length shall be counted as one-half (.5) FEU. One MT of Breakbulk cargo will be computed as one FEU.

## **4.5. Carrier Service Commitment**

4.5.1 Space Commitments: Carrier's space commitment shall be as stated at Paragraph 2.1.5.

4.5.2 Service changes.

4.5.2.1 The Carrier may modify its schedule to reflect permanent changes in equipment and in its regularly scheduled service as offered to the extent that the Carrier remains in compliance with provisions at Paragraph 2.1.

4.5.2.2 Carriers will provide the ACO a minimum of 60 days notice of an impending drydock. The Drydock Notice will include the vessels, the routes and port calls involved, the dates of the drydocking, the dates of the change in service, and a description of how carrier will maintain the same level of service, including substitution of vessels and other affected assets. Notices submitted less than 60 days before the dry docking will not be considered unless drydocking is the result of a Force Majeure situation. Exemptions will not alter established prices and other terms and conditions contained herein, applicable law and regulation will not be exempted, nor will provision be made for the carrier granted such exemption to recoup any cargo volume foregone over the exemption period during subsequent contract periods.

4.5.2.3 If the Carrier wishes to materially change its service or to substitute another vessel or other equipment initially offered for service, the Carrier must submit to the Contracting Officer within thirty (30) days of the anticipated change a written request detailing such change and the impact on the service provided. The Carrier shall not implement such a change without the written consent of the Contracting Officer.

## **4.6 Limitations of Carrier's Obligation**

4.6.1 Cargo Rejection. Notwithstanding any other provisions of this Contract, the Carrier shall have the right to reject explosives (other than Category 1.4); dry or liquid bulk cargo (i.e., not packaged, containerized or in vehicles); any species of live animals and other cargo deemed by the Carrier to be dangerous or obnoxious in character. Any such cargo accepted for carriage shall be freighted at the General Cargo rate.

4.6.2 Unsafe Operation. The Carrier shall not be required to receive or deliver containers at points or places where it is impracticable or unsafe to operate tractors and chassis due to conditions of roads, streets, or alleys or when prevented from doing so because of fire, acts of God, acts of war, riots, civil commotion, strikes, lockouts, stoppages or restraints of labor or other labor disturbances.

4.6.3 Hazardous Cargo. The transportation and handling of hazardous cargo for shipment shall be subject to Title 49 of the Code of Federal Regulations, Part 171, et seq. (49 CFR) and International Maritime Organization (IMO), the Dangerous Goods Code in force at the time of shipment. The Carrier shall refuse to transport hazardous cargo, either by land or by ocean, which does not conform in all aspects to these regulations and any other applicable U.S. governmental regulations.

4.6.3.1 Responsibility for Charges. When the Carrier refuses to pick up a container based on non-compliance with appropriate regulations as stated herein, the Government shall reimburse the Carrier the actual costs incurred for such container if the Carrier has made a futile trip in connection with such circumstances as a result of Government failure to comply with applicable hazardous cargo regulations.

4.6.4 Maximum Volume of Cargo. The Carrier's maximum cargo volume service obligation to the Government under the Contract schedule is the full cargo capacity of the vessel(s) offered for service.



4.6.5 Improper Government Documentation. If the Government does not provide the Carrier with the correct cargo documentation at the time and location of Carrier acceptance the Carrier shall request shipping instruction data from the manifesting activity in order that the cargo can be completely identified for onward movement. This information must be provided within one (1) working day of receipt of cargo, or earlier, if necessary to meet the scheduled vessel sailing.

## 5.0 PERFORMANCE OBJECTIVES

### 5.1 Expression of Performance Requirements

Each performance requirement may contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

- **Performance Objective** – The desired outcome or result expected of the Carrier.
- **Performance Measures** – The critical characteristics or aspects of achieving the objective that will be monitored by the Government. Each objective may have one or more measures.
- **Performance Standards** – The targeted level or range of levels of performance measured.

### 5.2 Use of Performance Measures/Standards

Not every performance objective in this contract has a related performance measure or performance standard. However, every performance objective is a contractual requirement. For those performance objectives that do not specify a measure or standard the measures and standards are IAW standard commercial practices, i.e., substantial compliance with local customary trade practice. Unless otherwise noted, performance objectives without measures and standards imply standards of 100 percent. Performance measures/standards, where specified, may be used to achieve a variety of goals, including collection of data to test the practicality of a performance standard; identification of a performance standard of less than 100 percent compliance; emphasis on most critical performance objectives; collection of data to support quality assurance and contractual remedies and similar goals.

### 5.3 Carrier Submission of Vessel Schedules

5.3.1 Performance Objective #1 Schedule Input and Maintenance. The Carrier must maintain up-to-date vessel schedules within the Integrated Booking System (IBS). Schedules shall be input into IBS reflecting vessel schedules at least forty-five (45) days in advance of sailing.

Performance Measure:	Performance Standard:
Maintenance of Vessel Schedules	100% Updated and Accurate

The Vessel Schedule will contain the following data elements. The carrier will update and maintain data marked with a "\*":

- \* POE/POD (Indicator to show which ports on the schedule are for load and which for discharge)
- \* Scheduled Vessel Arrival Date at the port \*Scheduled Vessel Departure Date at the port
- \* Dry Cutoff Date; report for POEs only \*Reefer Cutoff Date; report for POEs only
- \* DTR vessel status code
- \* Feeder/ Direct. Indicator to show whether the port is served by the vessel named in the schedule. The name (IRCS) of the feeder vessel is also required

5.3.1.1 Cut-off Times. The carrier shall establish and publish its local and vessel cutoff times based on cargo receipt described in Section 5.4.

5.3.2 Performance Objective #2 Vessel Posting to CARE II. Vessel information provided by Carrier as part of their proposal will be posted to IBS by the start of the bookings under this contract. Carriers will input changes to information provided on vessels offered for service under this contract into IBS after receiving approval from the CO. Information required shall include:

- International Radio Call Sign (IRCS)
- Ship Name
- Vessel flag (Country)

Performance Measure:  
Timely input of vessels changes

Performance Standard:  
100%

5.3.3 Performance Objective #3 Booking Acceptance. The Carrier must accept cargo bookings, up to its vessel capacity, if the Government orders are received no less than five (5) working days prior to local cargo receipt time as defined in Paragraph 5.4 for a scheduled sailing. The Carrier must respond to all Government bookings on the same working day they are received, if the Carrier, prior to 1430 local time, receives the order. Carrier responses for bookings received after 1430 local time must be provided by 1200 local time the next working day.

Performance Measure  
Response within allotted Times

Performance Standard  
100%

## 5.4 Container Service

Cargo Receipt Time. Non-perishable cargo must be received at the Jacksonville facility for a specific sailing by Monday at 1600, the week of the scheduled vessel departure. Perishable cargo must be received by Wednesday at 1200 the week of vessel sailing. Any material received after this period will be scheduled on the next available vessel sailing.

5.4.1 Performance Objective #4 Spotting Empty Containers. The Ordering Officer (OO) or onsite Contracting Officer's Representative (COR/ACOR) or Alternate COR/ACOR will provide the Carrier at least two working days notice as to where to spot an empty container unless a shorter notice is agreed upon by the carrier. The notice will include the booking number, type, size, the name and address of the shipper, the date and a specific time for spotting the container, and will specify the categories of cargo to be stuffed in container.

Performance Measure  
Spotting of containers  
within 2 hours of time specified

Performance Standard  
100%

5.4.2 Performance Objective #5 Container Pickup. The Carrier shall pick-up and remove a container as follows:

- Stuffed container(s) within 24 hours from notification time and date and
- Empty container(s) within 72 hours from notification time and date.

Pickup time provisions shall commence at 0800 hours on the day following carrier's receipt of notification that the container is in all respects ready to be transported, unless this requirement is waived by the OO. Time shall not run during Saturdays, Sundays, and locally observed holidays.

Performance Measure:

Performance Standard:

Timely pickup of stuffed containers as ordered	100%
---	------

5.4.3 Performance Objective #6 Chassis Requirement. Containers provided by the Carrier at GTMO shall be placed on chassis and shall remain with the containers (while they are in the custody of the Government) unless this requirement is waived by the OO.

5.4.4 Performance Objective #7 GTMO Inland Delivery. The Carrier shall contact the consignee to establish a delivery time. Unless delay is requested by the OO, the Carrier, after the discharge of the container from the vessel, will commence inland transportation for dry cargo within two (2) working days of discharge. The Carrier will commence inland transportation of refrigerated containers within one (1) working day after the container has been discharged from the vessel. Vehicles will be delivered within forty-eight (48) hours after discharged from the vessel. Time shall not run on Saturdays, Sundays, or locally observed holidays. Upon delivery, the Carrier will present the consignee with a delivery receipt designating the destination, pieces, weight, cube, description of cargo, and TCN for the container.

Performance Measure:	Performance Standard:
Commencement of inland transport- ation of reefers per time standards	100%

5.4.5 Performance Objective # 8 CONUS Delivery. All cargo shall be discharged within twenty-four (24) hours of vessel docking. All deliveries within a 250-mile radius of the POD will be completed within one (1) working day after commencement of delivery or customs/agriculture clearance, whichever is later. One additional day for each increment of 300 miles shall be acceptable.

Performance Measure:	Performance Standard:
Completion of Inland Delivery	100%
Timely discharge of cargo	100%

## 5.5 Accessorial Services

The Government will pay for such services at the rates (per measurement ton) of cargo set forth in the Table of Accessorial Rates in the Schedule.

5.5.1 Performance Objective # 9 Controlled Atmosphere Service. The Carrier's equipment shall provide a controlled atmosphere system for refrigerated containers that meets CFR requirements. The Carrier shall provide a printout of the Tectral Control Atmosphere Report for each refrigerated container to consignee upon delivery.

Performance Measure:	Performance Standard:
Deliver Controlled Atmosphere on Reefers	100%

5.5.2 Cargo Handling Contractor shall provide cargo handling services that consist of stuffing, unstuffing, transloading, and consolidation of containerized cargo at Contractor designated facilities. This service shall include, without regard to type/size container, the tallying of cargo, and necessary blocking, bracing, and dunnage.

Cargo handling consists of three basic categories:

5.5.2.1. Lift-on/Lift-off services (containers/cargo): Services include but are not limited to grounding and mounting containers to/from chassis, flatbed trucks or rail cars. Loading and unloading of high, wide and heavy cargo to/from inland conveyances at ports and inland origin/destination.

5.5.2.2. Re-handling of overweight cargo: Re-handling services could also include bundling and palletizing cargo stripped from a container due to excess capacity weight of cargo and reloading into another container.

5.5.2.3. Cargo handling at origin or destination. Load/unload cargo into/from container/conveyance at origin/destination, block/brace/secure for safe transport; provide materials to block/brace/secure cargo; pack/mark cargo.

5.5.2.4. Performance Objective No 10 Cargo Handling as: The Contractor shall provide stuffing, consolidating, stripping, sorting, and transloading services as specified in the booking or as ordered by the OO.

5.5.3. Performance Objective # 11 Provide Tally Sheets. Carrier shall also provide the OO with a hard and soft copy of a tally sheet reflecting the contents of stuffed containers indicating pieces, weight, cube, assigned Transportation Control Numbers (TCNs), and seal number for each container stuffed. The Carrier shall affix a military shipping label (DD Form 1384) on the outside of the container and a packing list inside the door of each container.

Performance Measure:	Performance Standard:
Submission of Tally sheets	100%
Affixing labels and packing lists in container	100%

5.5.4. Performance Objective #12 Notification of Damaged Cargo. Carrier shall immediately notify the OO of LCL shipments arriving carrier's terminal for stuffing that are found damaged or not suitable for containerization.

5.5.5 Performance Objective # 13 Re-spot Service. The Carrier's re-spot service shall be provided in GTMO and shall consist of moving a Government stuffed container from the initial point of delivery within a facility to another point within that facility.

5.5.6. Performance Objective # 14 POV Processing. The Carrier shall document the receipt of Privately Owned Vehicles (POVs) from owner or owner's agent, process vehicles for ocean transit, and process POVs for delivery to the owner when ordered by the OO. The Carrier shall receive/issue POVs from/to service members or the Government agent at the NAVSTA GTMO terminal, and from/to service members at the Carrier's Jacksonville, FL terminal. The Jacksonville terminal shall process POVs, includes customs clearance, during the period Monday through Friday from 0800 until 1700. An inspection of the POV, similar to that which is customarily provided by a common carrier in its usual commercial service, including usual documentation, will be accomplished with the service member or his/her representative upon receipt and issue. At the time of pickup, the POV shall be returned in the same condition of cleanliness as received and noted on the receive/discharge inspection report, to include washing as required. In Jacksonville, the Carrier shall provide storage of POVs in a secure (generally closed to the public), lighted, fenced, and paved area pending pick-up by the owner/owner's agent for up to 30 days. The Government will provide storage facilities in GTMO for use by the Carrier. Storage charges will be paid at the detention rate specified in Special Terms and Conditions, Paragraph (d)(5), if storage is required, beyond thirty (30) days in the Carrier's Jacksonville facility.

Performance Measure:	Performance Standard:
Timely and complete processing of POVs	100%

5.5.6.1 Shipping of POVs (Government Sponsored PCS Moves ONLY). The booking of POVs with the Carrier is premised on the ability of the Carrier to achieve the RDD associated with each individual POV. The ability of the Carrier to achieve the POV RDD is determined by reference to the Assured Ocean Transit, Inland Delivery, and other time period provided herein concerning the overall movement of cargo from the time it is tendered to the Carrier by the Government at origin until it is delivered at the designated destination in the booking. In accepting a POV booking, the Carrier warrants that it can achieve delivery of the POV by the designated RDD under the terms

and conditions of this contract. If the Carrier fails to deliver a POV on or before the RDD, the Contracting Officer shall assess \$30.00 damages per diem against the Carrier. Damages shall be assessed for each day that the delivery exceeds the RDD, including day of delivery, up to a maximum period of seven calendar days (maximum Carrier liability of \$210.00 per POV). The Carrier may be exonerated from this liability only under circumstances constituting Force Majeure or and Excusable Delay (FAR 52.249-8 entitled Default (Fixed Price Supply and Service) Alternate I (APR84)). The Carrier is at all times required to deliver the POV as soon as possible following the conclusion of any Force Majeure or Excusable Delay circumstance. If the failure to achieve delivery by the RDD is partially excused, damages shall be assessed on a pro-rata basis. The Carrier bears the burden of establishing exoneration on the basis of any Force Majeure or Excusable Delay circumstance.

5.5.7 Performance Objective #15 Flat-rack Service. The Carrier guarantees the required number of flat-racks requested by the Government for each vessel sailing, provided the requirement is given to the carrier by the OO at least two (2) weeks prior to the intended sailing of the Carrier's vessel.

Performance Measure:  
Availability of Flat Racks

Performance Standard:  
100%

## 5.6 Refrigerated Containers

5.6.1 General. Self-sustaining refrigerated containers, not more than two years old at contract/service inception, shall be provided by the Carrier for this service. Such containers shall be in good working order and delivered to the stuffing activity pre-cooled to the in-transit temperature specified by the Government. Reefers will be loaded on the vessel last at CONUS port of loading and offloaded first at GTMO.

5.6.2 Performance Objective #16 Quality of Refrigerated Containers. Containers shall be maintained at an internal temperature within three (3) degrees Fahrenheit of the specified in-transit temperature from the time of initial stuffing until unstuffed at final destination. For Chilled Cargo in refrigerated containers only, the in-transit temperature specified in the booking for service shall be maintained by the Carrier at an internal temperature within plus or minus three (3) degrees Fahrenheit of the specified temperature from the time of initial stuffing until unstuffing at final destination providing that such variance does not allow cargo freezing.

Performance Measure:  
% of refrigerated  
containers meeting requirements

Performance Standard:  
100%

5.6.3 Performance Objective #17 Temperature Recording. The Carrier shall furnish two operable continuous temperature recording instruments (to include at least one interior Ryan type recorder or equivalent and one exterior recorder) in each refrigerated container ordered. These instruments shall measure and record in a legible manner any variation in temperature of one degree Fahrenheit or more inside the container during the time it is stuffed with cargo. The original printed records of the temperature maintained during the transit from origin to destination shall be made available for inspection by the receiving activity when the container is delivered. Upon request of the consignee, a copy of the original records shall be provided to the receiving activity within five (5) working days.

Performance Measure:  
Provision of Recorder inside reefer

Performance Standard:  
100%

Performance Measure:  
Submission of Printouts

Performance Standard:  
100%

5.6.4 Performance Objective #18 Maintenance and Fuel. It is the sole responsibility of the carrier and the Carrier shall bear the costs of maintaining its refrigerated container equipment in good working order. Reefers must arrive inspected and certified with the capability of operating at 220 and 440 electrical volts with separate wires and plugs for reefers. The carrier is responsible for delivering a container to the consignee with a full tank of fuel. This fuel

shall be provided at the Carrier's expense. The carrier must also provide a back-up/redundancy/monitoring system for adequately protect the contents of the reefers during the entire transit.

## **5.7 Hazardous Waste Material**

5.7.1 Performance Objective #19 Provide Hazardous Waste Containers. The Carrier shall provide empty containers with applicable placards at GTMO for hazardous waste material required to be shipped to CONUS. Carrier shall be responsible for placing the appropriate placards on these containers. Hazardous material may consist of, but is not limited to, antifreeze, contaminated soil, asbestos, corrosive liquid and solids, poly-chlorinated biphenyl (PCB)'s, regulated and non-regulated flammables, and oils and lubricants.

5.7.1.1 Tank Container Service. The commodity will be containerized in Government Bulk Fuel Tank Containers and shipped on a carrier-furnished chassis. Carrier must comply with all applicable U.S. and foreign laws and/or regulations established for transportation of such cargo including but not limited to Title 49 of the Code of Federal Regulations, Part 171 et seq. (CFR et seq.) and the International Maritime Organization (IMO) regulations. If the carrier fails to meet any obligations imposed by these regulations, then any liability resulting from the carrier's non-compliance with these regulations will be solely the carrier's responsibility.

5.7.1.2 Transportation Documentation. Carrier should accept only those hazardous material and/or wastes that have been manifested in accordance with 40 C.F.R. 262.20 and 262.20(b). The manifest shall stay with the shipment to its destination. The Government will arrange for pick-up and movement of the hazardous waste from the Carrier's CONUS terminal to the treatment, storage, or disposal facility (TSD).

5.7.1.3 Spill Reporting. In the event of an accidental discharge of the hazardous cargo during transport, the carrier is required to take immediate action to protect human health and the environment as defined in 49 C.F.R. 171.15 and must be reported verbally and in writing to the National Response Center, Office of Hazardous Material Regulations Department of Transportation, Washington, DC 20590. (See 33 CFR 153.203, 40 C.F.R. 263.31) State and local laws may require additional notifications. Carrier is liable for spills and discharges of hazardous cargo while being transported and is responsible for the cleanup. (See 40 C.F.R. 263.30 and 31).

5.7.1.4 Storage. Carrier may store hazardous waste material en-route for up to ten (10) days at each transfer facility as defined by 40 C.F.R. 260.10, 263.12 and 268.50 (a) (3) without becoming a TSD facility. If storage exceeds the ten days at any transfer facility, then the carrier must issue a new manifest and sign and return to the initial shipper its original manifest. Carriers that transport hazardous waste material into the United States from abroad or mix hazardous wastes of different DOT shipping descriptions into the same container must also meet the standards applicable to hazardous wastes shippers.

## **5.8 Government — Containers**

The Government may book cargo for carriage in Government-owned or leased containers or may book carriage of empty Government-owned or leased containers. The Carrier will furnish any additional equipment, including chassis, necessary for the carriage of cargo in Government containers in accordance with the provisions of this Contract. All provisions of this Contract shall apply to the carriage of cargo in Government containers in the same manner that they apply to the carriage of cargo in the Carrier's container.

## **5.9 Transfer of Containerized Cargo**

The Carrier shall not transfer or transload cargo from one container to another without the authorization of the PCO/COR/ACOR except when such transfer is required to safeguard the cargo during the continuation of the

movement. When cargo is transferred from the original container, the Carrier shall immediately notify the SDDC activities having cognizance over the loading and discharge ports. Such notice shall contain the serial number and seal number of the original container, and of the container to which cargo was transferred, the place where the transfer occurred and the reason for the transfer. When the container to which the cargo was transferred differs in internal cubic capacity from the original container, freight shall be based upon the cubic capacity of the original container.

5.9.1 Performance Objective #20 Container Identification. Within thirty (30) days of the effective date of this contract, containers shall be clearly marked to indicate the name of the Carrier. Leased containers utilized under this Contract shall have the name of the Carrier, affixed with stencils or stickers, in letters of not less than three (3) inches in height. As a minimum, such identification will be affixed to each end of a leased container.

## **5.10 Equipment Substitution**

When ordering containers from the Carrier, the OO will specify the size and type of the container required. The Carrier shall not furnish a container of a different type or size than ordered without authorization from the OO. If the OO allows the Carrier to substitute a larger size container than booked, and the loaded shipment does not exceed the cubic capacity of the size container originally ordered, the Government shall pay for the size ordered only. If the loaded shipment exceeds the cubic capacity of the size container originally ordered, the Government will pay for the size container actually furnished.

5.10.1 Performance Objective #21 Equipment Pools. The Carrier must establish and maintain equipment pools, as necessary, at CONUS inland locations as designated by the contracting officer to ensure timely availability for outloading operations. The expense for operating equipment pools must be borne by the Carrier.

Performance Measure:  
Availability of Flat Racks

Performance Standard:  
100%

## **5.11 Break Bulk Service**

Performance Objective #22 Break Bulk Service The Carrier shall provide liner term break bulk cargo service that shall consist of receiving cargo at its facility; cargo handling; loading and transporting the cargo in its vessel; and discharging the cargo and moving it to the staging area in GTMO or Carrier's Terminal(s) in CONUS. All break bulk cargo shall be carried with protected stowage on board the Carrier-provided vessel. Break bulk cargo received as indicated in Paragraph 5.4 shall be loaded on the scheduled (booked) vessel.

## **5.12 Submission of Operational Reports**

### **5.12.1 Load Report**

The Carrier shall provide (by mutually agreeable means) the cognizant SDDC activity and the activity responsible for cargo documentation (including the COR/ACOR) with the following information in connection with cargo loaded at each port.

5.12.1.1 On terminal in-gate information (CONUS/OCONUS). Cargo on terminal in-gate information shall consist of carrier name, port of loading, date cargo received at port, container number with ALPHA prefix, TCN, and seal

and/or keyless lock number. This data shall be provided within four working hours of cargo receipt by the Carrier to the QAE.

5.12.1.2 Cargo Receipt. The Ship Master shall sign the Vessel Papers or receipt acknowledging receipt of the cargo in apparent good order and condition or he/she shall record thereon any apparent damage to or shortage of such cargo or any other specific exception to the cargo as listed on the manifest or receipt. For containerized cargo both received by the Carrier and delivered at destination under seal, the Master's receipt acknowledges only the apparent good order of the container.

5.12.1.3. Cargo Lift Information (CONUS/OCONUS). Cargo lift information shall consist of: name of vessel and voyage document number, container number with ALPHA prefix, TCN, port of discharge, final destination, general description of cargo (i.e., general cargo, mail/mail equipment, POV, other vehicles, refrigerated cargo, and seal and/or keyless lock number). This data shall be provided within eight working hours after vessel departure to the COR/ACOR.

**Note:** If a seal on any container has been broken and/or replaced while in the Carrier's custody, the Carrier shall notify the COR/ACOR and the designated Government representative (e.g. QAE) at the Port with a complete report as to the circumstances and the reasons therefor.

5.12.1.4 Voyage Reconciliation. The Carrier shall provide both the cognizant SDDC activity and local activity responsible for cargo documentation a listing of cargo to include container number and TCN of cargo which were booked but not loaded, or loaded but not booked, and the reasons why the cargo missed their designated scheduled sailing. Such notification shall not relieve the Carrier of its obligations under this Contract to fulfill the original cargo booking commitments. Reports shall be furnished within eight hours after vessel departure to the COR/ACOR.

## 5.12.2 Discharge Report.

The Carrier shall provide either the Supply Officer's agent at GTMO or designee at SDDC (including the COR/ACOR) with a discharge report. This report shall be provided for cargo discharged as soon as practicable after discharge, but not later than twenty-four (24) hours after discharge. Information must indicate the following for each shipment/TCN: name and voyage number of vessel, date and time cargo was discharged, date and time cargo is available for commencement of drayage or linehaul, and date, time and mode of commencement of drayage or linehaul.

## 5.12.3 Situation Report.

The Carrier shall provide written notice within four (4) hours to the Contracting Officer, QAE, the OO and the COR/ACOR and any other designated representatives of the Government of any operational shortfall that occurs relative to the services described in this contract. Examples of operational shortfalls include sailing delays, container unavailability, strikes, receiving delays, port backlogs and equipment failures.

## 5.12.4 Vessel Position Reports.

The Carrier shall report via e-mail specifying longitude and latitude, and distance to go at 0600 and 1800 to the distribution list provided by the Government..

## 5.12.5 Performance Objective #23 Operational Reports.

Carrier shall submit the load, discharge, situation, vessel position reports in the frequencies noted above.

Performance Measure:

Performance Standard:



Submission of reports on-time

100%

## 5.13 Electronic Data Interchange (EDI)

### 5.13.1 EDI and Automated Carrier Interface (ACI) System.

5.13.1.1 Booking and In-transit Status Data. The Carrier shall use Electronic Data Interchange (EDI) protocols or Ocean Carrier Interface (OCI) as the primary means for interfacing with the SDDC. SDDC will make OCI training available as required to Carriers.

Carriers electing to participate in the SDDC EDI are required to execute a Trading Partner Agreement with SDDC.

5.13.1.2 Defense Transportation Electronic Data Interchange (DTEDI). The Carrier must use the Defense Transportation Electronic Data Interchange approved Implementation Convention for the ANSI X-12 300, 301, 303, and 315 transaction sets in compliance with their approved concepts of operation. Versions 3060, 4010 or later are required. The Carrier will implement changes to business processes contained in revisions to Transaction Set Implementation Conventions and their controlling concepts of operations as may be approved by the Ocean ACI Committee. These changes must be implemented in accordance with schedules approved by the Ocean ACI Committee.

5.13.1.3 Performance Objective # 24 Event Reporting. Carriers shall receive booking data (300) and cancellation data (303) from SDDC, and shall send booking confirmation (301) and in-transit status (315) data to SDDC.

Carriers shall provide the Government status reports for the following events:

Code	Meaning	Notes
EE	Empty spotted	Empty container outgate is acceptable in lieu of actual spot reports
W	Pickup of Loaded container	Required only if carrier provides origin pick-up for inland dray/linehaul
I	In-gate	At POE
VD	Vessel sails	At POE and at transshipment ports
VA	Vessel arrival	Report actual vessel arrival
UV	Vessel discharge	At POD and at trans-shipment ports
OA	Out-gate	At POD (Not applicable in GTMO)
X1	Delivery	At consignee
EC	Empty container pick-up	At consignee

In-gate, sail, arrival, discharge and out-gate events will be reported within 6 hours of the event. Other events will be reported within one business day of the event.

Performance Measure:  
Submission of reports on-time

Performance Standard:  
100%

### 5.13.1.4 Performance Objective # 25 Accuracy of EDI transactions.

Carrier shall provide accurate and complete EDI transactions for all events indicated in Paragraph 5.13.1.3.

Performance Measure:  
Accuracy of EDI  
transactions

Performance Standard:  
100%

## **6.0 INSPECTION OF COMMERCIAL SERVICES**

### **6.1 *Quality Assurance Program (QAP)***

The Government will monitor the Carrier's performance under this Contract through its Quality Assurance Program (QAP), which will consist of continuing evaluation of all services including documentation provided by the Carrier. The ACO shall issue administrative instructions for this program. A copy of the Performance Requirements Summary (PRS) is incorporated as Attachment 5 to this Contract. To the extent that any conflict may arise between this plan and the substantive provisions of RFP- and the resultant contract(s), then the substantive portions of the RFP and the resultant contract(s) shall apply.

#### **6.1.1 Quality Council Meetings**

In order to identify and resolve potential operational problems, review Carrier performance, and to solicit continuous process improvement ideas, a Quality Council Meeting will be conducted twice per year. Participants for these reviews include representatives of the Carrier, Ocean Cargo Booking Office (OCBO), Ocean Cargo Clearance Authority (OCCA), Shippers, as well as the Administrative Contracting Officer (ACO), Ordering Officer (OO) and the COR/ACOR.

### **6.2 *Quality Control Plan***

The Carrier must establish and maintain a Quality Control Plan (QCP). The QCP shall cover as a minimum how the Carrier intends to meet the requirements and what mechanisms will be used to monitor and proactively manage DoD shipments moving in the Carrier's system to ensure quality service. The plan will also include the timely reporting of information to designated Government personnel for any potential performance shortfalls, problems/failures, and other incidents that are likely to result in loss/damage of DoD cargo or delays beyond the required delivery dates. A copy of the QCP shall be submitted to the Contracting Officer within thirty (30) calendar days from the date of contract award. The Carrier shall revise the plan and submit it to the Contracting Officer within ten (10) calendar days after notification by the Contracting Officer of deficiencies requiring corrective action.

### **6.3 *Liquidated Damages***

#### **6.3.1 Reserved**

**6.3.2 Failure To Spot.** When the Carrier fails to spot an empty container by the designated date and time, and as a result there is not reasonable time to allow stuffing and release of the container in sufficient and reasonable time to meet the scheduled sailing date of the vessel to which the container is booked, the Carrier shall be liable for the payment of liquidated damages. The Government shall also be entitled to cancel the booking of such cargo at no cost.

**6.3.2.1** Liquidated damages for failure to spot shall be equal to the detention charges as stated in Special Terms and Conditions, Paragraph (d)(5), for each 24-hour period, or part thereof, from the time and date for spotting until the container is spotted or a new spotting date and time are agreed upon by the OO. Further, if the failure to spot does not allow for Government stuffing and release of the container in sufficient reasonable time to meet the scheduled sailing date of the vessel to which the container is booked, liquidated damages equal to detention charges for each 24-hour period, or part thereof, will apply from the completion of loading of the vessel to which the container was originally booked to the time of commencement of loading of the Carrier's next scheduled vessel to the port of destination to which the container was booked. If the Government cancels the booking, the Carrier's liability for liquidated damages shall be limited to the period ending with cancellation.

6.3.2.2 Neither liquidated damages nor charges for Government expenses will be assessed if the Carrier can establish: 1) that the inability to spot the container as agreed is the result of the Government's failure to unstuff and release an empty container to the Carrier within a reasonable time to meet the required spotting date and 2) that it advised the OO of such inability at least seven days prior to the required spotting date..

6.3.2.3 When the Carrier fails to spot an empty container by the designated date and time, and as a result the Government must incur overtime expenses to enable stuffing and release of the container by the Government prior to the scheduled sailing date of the vessel, the Carrier shall be liable for payment of liquidated damages equal to the total overtime expense incurred by the Government.

### 6.3.3 Overweight Containers.

6.3.3.1 If the Government stuffs a container with cargo weighing in excess of the container's standard maximum weight carrying capacity or in excess of any lesser weight of which it has been given notice under this Section, it shall remove, or pay the expenses of the Carrier in removing or handling the excess weight of cargo. All consequences or liabilities that may result from excessive weight of containers stuffed by the Carrier shall be the responsibility of the Carrier. All fees or other costs incident to weighing containers shall be the responsibility of the Carrier.

6.3.3.2 The Carrier shall not refuse to carry a container that weighs in excess of the local maximum weight allowed by U.S. Federal, state, or local governments if the container can be discharged from the vessel and the excess weight of cargo can be removed without violation of the applicable law, regulation, or ruling that established the maximum weight.

6.3.4 Government Failure To Release Containers In a Timely Manner. When a container which has been positioned at a Government stuffing facility is not released by the Government within a reasonable time to meet the scheduled sailing time and date of the Carrier's vessel to which it is booked, thereby precluding the container from being loaded on the vessel, the Government shall have the alternatives set forth below. In no event will the Government be liable for vessel demurrage or dead freight as a result of failure to release a container in time to meet a specified vessel sailing.

6.3.4.1 The Government may allow the Carrier to load the container on the next vessel scheduled to the booked port of debarkation and pay the Carrier detention charges set forth in the contract from the time of completion of loading of the vessel to which the container was originally booked to the time of the commencement of loading of the Carrier's next scheduled vessel to the port of debarkation to which the container is booked.

6.3.4.2 The Government may order the Carrier to move the container to another place for unstuffing. The Government shall bear all costs of such movement and shall pay detention charges set forth in the contract between the time of completion of loading of the vessel to which the container was booked and the release of the empty container.

6.3.5 Carrier Failure To Load Containers. When a stuffed container is released by the Government within reasonable time to meet the scheduled sailing time and date of the Carrier's vessel to which it is booked and the container is delayed, through fault of the Carrier, thereby precluding the container from being loaded on the vessel, the Government shall have the remedies set forth below.

6.3.5.1 The Government may order the Carrier to load the container on the next vessel scheduled to the same port of debarkation and hold the Carrier liable for liquidated damages equal to detention charges from time of completion of loading of the vessel to which the container was originally booked to the time of completion of loading of the Carrier's next scheduled vessel to the port of debarkation to which the container is booked.

6.3.5.2 The Government may order the Carrier to move the cargo to another place, including another Carrier's terminal, and the Carrier shall bear all cost of such movement. The Carrier shall also be liable for freight, and any

other expenses, paid by the Government for movement of the cargo over that freight which would have been paid to the Carrier if it had been loaded as originally booked.

6.3.5.3 The Government may elect to return the cargo, in which case the Carrier shall move the cargo to a place designated by the OO for unstuffing and shall bear all costs for such movement and unstuffing. The Government shall not be obligated to pay for use of the container. The Carrier shall be liable for liquidated damages in an amount equal to detention charges, commencing at the time of completion of loading of the vessel to which the container was originally booked and ending when the OO notifies the Carrier of this course of action.

6.3.6 Delay Of Scheduled Sailing. If the scheduled sailing to which container cargo is booked is delayed more than forty-eight (48) hours, the Government shall have the alternatives set forth below.

6.3.6.1 The Government may allow cargo to move on the delayed sailing.

6.3.6.2 The Government may order the Carrier to move the containers to another place, including another Carrier's terminal. The Carrier shall bear all costs for such movement, including the removal of the containers from the vessel and placement on a chassis. The Government shall return the containers to the Carrier at the port of debarkation.

6.3.6.3 The Carrier is entitled to compensation for expenses incurred in the movement of the cargo prior to the ordered release to another ocean carrier. Carrier shall be responsible for submitting and supporting these expenses.

## **7.0 RATE RULES**

### ***7.1 Orders for Service***

The Government will prepare all necessary papers including shipping instructions, vessel papers or manifests listing the cargo to be stowed aboard the vessel. Such papers shall be receipted by the Carrier or his agent, and shall be evidence of ownership. These documents and the booking shall be deemed to be an Order within the meaning of the Ordering Clause (See FAR 52.216-18). The OO shall provide the Carrier with written notice of the Government activities authorized to issue Orders.

### ***7.2 Application of Rates***

7.2.1 Expression of Rates. All rates appearing in CARE II - SM System are stated in U.S. dollars and cents per the applicable unit of measure.

7.2.2 Containerized Cargo. All rates for containers are based on liner terms.

7.2.2.1 Single Factor Rates. Single factor rates are "all-in" rates that can apply to door/door, door/pier, and pier/door rate movements. Freight shall be computed by applying the applicable single factor container rate.

7.2.2.2 Bi-Factor Rates. In order to minimize number of rates, mileage rates may be used in conjunction with pier to door rates to meet door to door requirements whenever a single factor rate is not available. For the purposes of this contract, this is referred to as a bi-factor rate.

7.2.3 Break bulk Cargo. All rates included herein are based on a liner term basis. Cargo shall be rated based on a MT as defined as either 40 cubic feet or 2240 pounds per ton whichever will generate the highest tonnage units and revenue when applied to the dimensions and weight of cargo. Only general cargo will be rated on a weight or cube

basis. Cargo booked as break bulk cargo will be so freighted at the MT rate, regardless of whether containerized for the Carrier's convenience.

#### 7.2.4 Over Dimensional and Unusual Size Cargo Service

7.2.4.1 Over dimensional cargo is defined as cargo that when booked to be shipped as a unit of cargo in/on a single container does not exceed the following maximum weight and dimensions:

Weight:	48,000 lbs.
Length:	40'0" (480")
Width:	11 0" (132")
Height:	11'6" (139")

In addition, over dimensional cargo is considered to be cargo within the above maximum dimensions and weight which has a dimension (length, width, or height) that exceeds any external dimension of the container most suitable to the cargo when loaded and measured in/on such container. Selection of the equipment used for ocean transportation shall not result in over length dimensions when the cargo is loaded on a 40-foot flat-rack.

7.2.4.2 Charges for over dimensional cargo stowed on a vessel in containers shall equal the additional ocean rate for equivalent displaced standard dry container(s) by size, in accordance with the following formula (which includes use of a flat-rack container):

In gauge:	BOF	(Basic ocean freight)
		<u>+FRS</u> (Flat rack surcharge)
		TC (Total charge)
Over height:	BOF+	(BOF x 60%)
		<u>+FRS</u>
		TC
Over width:	BOF+	((BOFx2) x60%)
		<u>+FRS</u>
		TC
Over height and over width:	BOF+	((BOFx5) x60%)
		<u>+FRS</u>
		TC

7.2.4.3 A forty (40) percent discount shall be applied for displaced slots in any configuration. If other than flat-racks is used to ship over dimensional cargo, the flat-rack surcharge shall not be applied to the formula.

7.2.4.3 Flat-rack surcharges shall not apply to Government owned flat-racks in the rate computation for over dimensional cargo.

7.2.4.4 Displaced slots for which charges are assessed will be counted toward the minimum cargo guarantee.

7.2.4.5 Cargo that cannot be loaded on or in an intermodal container (closed, open top, flat-rack) prior to stevedoring is not covered by this formula.

7.2.4.6 The over dimensional formula is limited to port-to-port terms only. This formula can be applied to cargo exceeding either the weight and/or the dimensions defining over dimensional cargo when the Government and the carrier mutually agree to do so at the time of cargo booking.

7.2.4.7 Reserved

7.2.4.8 The Government reserves the right to ship oversized/over dimensional cargo on break bulk terms. The Carrier, at its discretion, may elect to containerize the cargo, but at no additional cost to the Government above those break bulk rates set forth in the CARE-SM II System.

### **7.3 Accessorial Charges**

7.3.1 Cargo Handling. When this service is ordered by the Government, Carrier will be paid for each manifested measurement tons (MT) for providing cargo handling services which consist of stuffing, unstuffing, transloading, and consolidation of containerized cargo at Carrier designated facilities or as specified by the Government. The rate applies without regard to type/size container and includes tallying of cargo, and necessary blocking, bracing, and dunnage, in accordance with the rates set forth in the Table of Accessorial Rates.

7.3.2 Re-spot charges. Re-spot charges shall be paid in accordance with the rates set forth in the Table of Accessorial Rates in CARE II -SM.

7.3.3 POV Processing. POV Processing charges shall be paid once for each POV processed in accordance with the rates set forth in the Table of Accessorial Rates in CAREII-SM. This rate will be applicable to all POVs delivered to the Carrier for transport to and from GTMO. The rate shall cover both receiving and issuing the vehicle. Any POV processing charges in association with the shipment of a second vehicle or marine conveyance in accordance with Paragraph 2.5 shall be billed to the owner of the second POV or alternate marine conveyance, consistent with the other charges found in Paragraph 2.5.

7.3.4 Flat Rack Surcharge. The carrier will be paid an additional surcharge as indicated in CARE II – SM.

7.3.5 Controlled Atmosphere Surcharge. The carrier will be paid an additional surcharge as indicated in CARE II – SM.

7.3.6 Equipment Lease Rates. The carrier will be paid the rates as indicated in the CARE II-SM.

7.3.7 Supercargo Service. The carrier shall be paid the rates as indicated in the CARE II-SM on per individual/per day basis.

### **7.4 CONUS Mileage Rates**

In the absence of specified line haul rates between points within CONUS, inland charges are computed using mileage band rates, multiplied by the mileage found in the Defense Table of Distances (DTOD). Mileage rates are stated by container size and are only used where no specific door/door rate exists. The DTOD is the official source for calculating distances when applying mileage rates. A commercial product that is DTOD compliant is “PC\*Miler” that will produce distance calculations identical to DTOD. If the Carrier has “PC\*Miler”, he will be provided a file of the official mileages to be used for all point to port and port to point combinations using mileage based rates. If the Carrier elects to use another source for computing mileage, he cannot be provided this file. Should there be any differences in the mileage computed by DTOD and the mileage invoiced by the Carrier, the Carrier will be paid based on the DTOD mileages. Rates for drayage or inland service in connection with the transportation of refrigerated cargo are applied at an additional 5% of the basic general cargo drayage inland or mileage rate.

### **7.5 Exceptions to General Application of Rates**

7.5.1 Government Furnished Containers. The Carrier's charges for through transportation of commercially acceptable Government containers will be ninety-five percent of the appropriate container rate for that cargo commodity when shipped in dry or flat-rack containers and 70 percent for tank containers. The Carrier's charges for empty Government containers shall be one-half the appropriate rate for that container type. When detention is incurred on the Carrier's chassis in connection with service provided for Government containers, the chassis detention rates will apply.

End of Performance Work Statement

## ***8.0 Special Terms and Conditions***

### ***8.1 Agreed Cost Responsibility***

General. As a means of facilitating the administration of this Contract, the parties have agreed that certain items of cost anticipated as likely to arise in the performance of their respective duties under this Contract shall be listed. Determinations of responsibility for items of cost agreed by the parties under this Section are intended to be consistent with the substantive clauses of this Contract; provided however, in the event of conflict, the substantive clauses of the Contract shall prevail.

**8.1.2 Responsibility of the Carrier.** The Carrier is responsible for the costs associated with the following services:

8.1.3 Furnishing and maintaining containers and chassis.

8.1.4 Drayage of containers including: Furnishing and maintaining tractors; furnishing drivers; delivery costs of movement of containers, including tractors and driver; highway, ferry, tunnel and bridge tolls; and user taxes.

8.1.5 All costs of vessel operation and all port charges and other expenses charged to the Carrier's vessel, including such charges assessed at Government installations.

8.1.6 All stevedoring costs and all costs of loading and discharging and preparation, including special cargo fire or security watch required by port regulations due to loading and discharging operations.

8.1.7 All container terminal costs including: receipt of containers; marshaling of containers; and cleaning containers before stuffing and after unstuffing.

8.1.8 Taxes, dues, fees and other charges (including storage charges levied by governments, ports authorities, or wharfingers) on break bulk cargo, on the containers, and on their contents, if any, except those charges which are payable by the Government. These are charges that are levied against the vessel.

8.1.9 Agency fees in connection with port clearance of cargo tariffs.

8.1.10 Landing and wharfage charges including: landing charges against cargo in accordance with the regulations of the port, including those billed by port authorities to the ship; and wharfage charged to military cargo.

8.1.11 All transportation have and intermodal equipment to be furnished at the Port of Guantanamo Bay, Cuba (e.g. crane, containers, chassis, forklifts, or top-loaders, etc.)

**8.1.12 Responsibility of the Government.** The Government is responsible for the cost of the following services:

8.1.13 Except when ordered from the Carrier, container stuffing and unstuffing including: labor employed; packing material and/or dunnage employed; preparing documentation; sealing the container; removal of packing material, dunnage and placards; and sweeping.

8.1.14 Miscellaneous dues, fees and charges including: cargo surveyor fees when services are ordered by the Government or when resulting from dispute between the Government and the Carrier resolved in favor of the Carrier; drayage or line-haul charges listed under Paragraph 7.7.3 above when performed by the Government.

8.1.15 Customs and other taxes, dues and/or taxes charged to the cargo; harbor and quay dues charged to the cargo based on local tariffs.

8.1.16 Contaminated cargo costs including: fumigation required solely because of contaminated Government cargo, including related costs and detention; crew overtime in connection with standby security watch when required by the OO during loading and discharging; crew wages, fringe benefits and related payroll tax when ship's crew are performing longshore work in cargo operations at the request of the terminal or by custom of the port including members of the steward's department required to prepare additional meal.

## ***8.2 Diversion for the Convenience of the Government***

Upon written direction by the Contracting Officer, the Carrier may route or divert its vessel, for the convenience of the Government, to a port of loading or discharging not on the route for which rates are quoted. The written direction shall reflect the special routing or diversion and state the agreed additional freight, if any, to be paid by the Government for such special routing or diversion. Compensation for CO directed diversion of shipment shall be provided as a negotiated equitable adjustment to the contract.

## ***8.3 Free Time***

8.3.1 Free Time Allowed. The total amount of free time in CONUS will be five working days. In Guantanamo Bay, total free time shall be ten working days or the time between delivery of a container and arrival of the Carrier's next vessel, whichever is longer.

8.3.2 Commencement of Free Time. Time shall commence to run at 0001 hours local time after the container is physically tendered for delivery.

8.3.3 Running of Time. Time shall run during any period when clearance by local government agencies is delayed due to the non-availability of documents required for such clearances which are furnished by the Government, provided, that the container is otherwise ready for line-haul/drayage and the OO has been notified of the unavailability of such documents. Time shall, when the Government requests such delay, run during the period of delay prior to commencement of inland delivery.

8.3.4 No Running of Time. Time shall not run during any Saturday, Sunday, or locally observed holiday at the place the container is located. Time shall not run during any period containers are held due to local labor disturbances.

8.3.5 Cessation of Time. Time shall cease to run at 2400 hours on the day the Carrier is notified that the container is released or when the container is returned to the Carrier, whichever is earlier.

8.3.6 Delivery at Carrier's Terminal. When the OO elects to take delivery of containers at the Carrier's Terminal at the port of discharge, time shall start to run when the container with trailer is hooked to the Government tractor.



## 8.4 Detention

8.4.1 Incurrence. In the event the Government holds the Carrier's container longer than the free time allowed, the Government shall pay detention charges as set forth below.

8.4.2 Computation of Detention. Detention charges will be paid at the rates set forth below for each 24-hour period of time, or pro-rata for part thereof, beyond the total allowed free time that the containers are held by the Government. Rates are expressed in dollars and cents and apply for containers with or without chassis.

8.4.3 Detention Invoices. Detention invoices must be submitted to the COR no later than six (6) months from the date the empty container is returned to the Carrier. Detention invoices received for payment after that time will not be certified for payment and the Carrier waives any right to payment thereafter. The Carrier must support any detention invoices with documentation that will provide a complete custody chain including names of personnel and legible signatures. Invoices not properly supported shall be denied.

8.4.4 Chassis Detention. When Government owned or leased chassis are not provided for carriage of Government owned or leased containers, and the carrier must furnish its own chassis, the carrier's chassis will be subject to the same detention and free time provisions as prescribed. When return of chassis to the carrier is delayed by the Government beyond the allowable free time and the chassis is being used solely for the carriage of Government owned or leased containers, the carrier shall assess detention charges as specified in below in Paragraph (5)

8.4.5 Container Detention Charges.

THE FOLLOWING CHARGES ARE FOR EACH 24-HOUR PERIOD OR PART THEREOF

**A. DRY CARGO CONTAINER CHARGE  
WITH OR WITHOUT CHASSIS**

(includes closed containers,  
open top containers, flat  
racks & car carriers)

- under 40'	\$ 9.00
- 40' and over	\$12.00

**B. REFRIGERATED CONTAINER &  
TANK CONTAINER**

- under 40'	\$50.00
- 40' and over	\$60.00

**C. CHASSIS**

(Only applies for use with  
Government owned or  
leased containers)  
(See 10-16.4)

- under 40'	\$ 9.00
- 40' and over	\$12.00

**D. STORAGE CHARGES FOR POV'S  
AND MILITARY VEHICLE  
HELD LONGER THAN 30 DAYS**

each vehicle	\$ 5.00
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## ***8.5 GTMO and JAX Port Security Requirements***

8.5.1 All vessels shall be inspected in accordance with the US Coast Guards' Uninspected Towing Vessel Safety regulation. Attachment 4

8.5.2) US Customs and Border Protection (CBP), Department of Homeland Security has issued specific instructions for the export cargo that is destined for US Naval Base Guantanamo Bay Cuba.

## ***8.6 Leasing of Carrier Equipment.***

Upon request of the CO, the Contract Administrator, or COR, the carrier shall furnish containers, flat-racks, and chassis, and in the case of non-self-sustaining refrigerated containers, also a generator set, for lease in connection with land and ocean transportation of Government cargo arranged under this contract or in support of sustainment operations. Equipment so leased may be transported aboard any vessel designated by the government and may be transported inland by any means available to the Government. Unless otherwise agreed, the Government shall return Carrier equipment leased by the Government to the place where such equipment was originally received from the Carrier. A modification/booking shall be issued to reflect each lease of equipment. The modification/booking shall set forth the number, size, and appropriate identification information of such Carrier equipment, the estimated duration of lease, and place of return. The Carrier shall be paid for each twenty-four hour period or part thereof, Saturdays, Sundays, and holidays included, for the period between the time the equipment is received or ordered from the Carrier, whichever is later, until the time the equipment is returned to the Carrier.

## ***8.7 Equipment Interchange.***

The Government may require that another carrier lift a loaded container belonging to the Carrier. If so directed by the Contracting Officer, in writing, the Carrier shall freely interchange the container to another designated carrier. The equipment will be returned to the carrier at the port of debarkation.

## ***8.8 Supercargo Service.***

The carrier shall provide this service for Government personnel or representatives on a per-day basis to cover room and board and food on board the tug, when requested by the Ordering Officer/booking office to accompany specific cargo moves. The carrier shall carry one (1) supercargo or the maximum number allowed for safety reasons as authorized by the Carrier at the time of request and/or as additional space becomes available.

## ***8.9 Carrier Inspection of Contents.***

When the Carrier is of the opinion that the cargo is unsuitable for shipment to the specified destination, the Carrier shall immediately advise the OO of such condition, and request a written decision regarding inspection of the container.

## ***8.10 Use of Government Terminals***

The Carrier shall pay the Government, represented by the agency operating the terminal, for any services or materials provided at a Government terminal in accordance with the current rates established by that agency.

### ***8.11 Shifting Docks***

Within a vessel's port of call, the COR/ACOR may require the vessel to call at, or shift to a particular dock wharf, place or open roadstead at which the vessel can lie always safely afloat at any time of tide, or at which, in the judgement of the Master, the vessel may lie safely aground, and to and from which the vessel may safely proceed when the aggregate of the cargo to be loaded or of the cargo to be discharged at such location is 300 measurement tons or more. If the COR/ACOR orders such a call or shift and less than 300 measurement tons of cargo are loaded or discharged, the direct costs of such shift shall be reimbursed by the Government. Nothing herein shall be construed as a warranty by the Government of berth, or approaches thereto, at facilities owned or operated by or for the Carrier or at other commercial facilities normally utilized by ships of the size of the carrier's vessel to load and discharge cargo.

### ***8.12 Custom of the Trade***

Wherever the standard of performance by either party is not provided under the provisions of these Basic Terms, the "Custom of the Trade" shall be used as a standard of performance. This phrase shall mean the established practice generally accepted by the trucking, rail, and marine shipping industries for cargo transportation service in the geographic trade covered by this Contract.

### ***8.13 Appointment of Personnel***

If the Government notifies the Carrier that the employment or the continued employment of the Master or any member of the crew is prejudicial to the interests or endangers the security of the United States of America, the Carrier shall make any changes necessary in the appointment(s).

### ***8.14 Safety in Loading and Discharging of Cargo***

The Carrier shall comply with all applicable provisions of Public Law 91-596.84 Stat. 1590 (approved December 29, 1970) known as the Occupational Safety and Health Act of 1970 (29 USC 655, ex. Seq.) and with the standards promulgated thereunder by the Secretary of Labor for Safety in loading and discharging of cargo. **Note:** The OSHA responsibility of Department of Defense Carriers is set forth in Defense Acquisition Circular 76-1 (30 Aug 1976), Item XXIII.

### ***8.15 War Risk***

8.15.1. Reimbursement. Normal Port Calls. In the event it is necessary for the vessel's owners to pay premium to extend the coverage of crew, hull and machinery, and protection and indemnity insurance and insurance covering the loss and damage of containers while aboard the vessel to include war risks in excess of premium on such war risk coverage on the date the Carrier's rates were submitted under this contract, or to pay crew war risk bonuses as a result of the vessel entering a war risk area, associated costs shall be reimbursed as a negotiated equitable adjustment to the contract.

8.15.2. Government Requested Port Calls. In the event the vessel calls at port within a war risk area solely for the purpose of loading or discharging cargo for the Government, the Government will reimburse the Carrier for all such

excess premium and bonus payments and for the extra cost of cargo war risk insurance premium on commercial cargo aboard the vessel at the time of entry into the war risk area.

8.15.3. Government Provided Insurance. If commercial marine, war risk, and liability insurance is not available or if marine, war risk, and liability insurance through the Secretary of Transportation under Sections 1202-1205 of the Merchant Marine Act of 1936, 46 App. U.S.C. 1282 - 1285, is available at a lesser rate, the Contracting Officer reserves the right to require Carriers to obtain the necessary marine, war risk, and liability insurance from the Secretary of Transportation. Further, in the event that the Secretary of Defense, or his authorized designee, is authorized to provide and does provide indemnification to the Secretary of Transportation under Section 1205 of the Merchant Marine Act, 1936, 46 APP. U.S.C 1285, for marine, war risk, and liability coverage without premium, the Contracting Officer reserves the right to require the Carrier to obtain such insurance from the Department of Transportation and no premium as set forth in Paragraphs 7.16.1.1 and 7.16.1.2 above will be paid to the Carrier.

8.15.4. Container Loss or Damage. The Government shall reimburse the Carrier against loss of or damage to a container in accordance with Paragraph 7.7 and as set forth below.

8.1.5.5. Causes. The Government shall reimburse the Carrier for loss and damage that is caused by capture, seizure, arrest, restraint or detainment, hostilities or warlike operations whether there be a declaration of war or not, civil war, revolution, rebellion, insurrection, civil strife, or civil commotion.

8.1.5.6. Location When Damaged. The Government shall reimburse the carrier for loss or damage that occurs when the container is not aboard the vessel, but is located within the war risk area and is (a) in the Government's custody or (b) not in the Government's custody but either stuffed with cargo shipped under this Contract or emptied of such cargo and being transported between place of initial stuffing or final unstuffing and the Carrier's nearest terminal, or other places not further distant than such terminal, and waiting at such terminal to be loaded in the first Carrier's vessel to call.

8.15.7. Not Otherwise Covered. The Government shall reimburse the Carrier for loss or damage to the extent that it is not covered by insurance as set forth in the Paragraph 7.7.

8.15.8. Limitation of Government Liability. No payments shall be due from the Government under this clause unless and until the Carrier shall also assess such costs against commercial cargo loaded or discharged in the war risk areas.

8.15.9. Government as Additional Assured. The Carrier agrees to add the United States Government as an additional assured with waiver of subrogation noted on its war risk policy obtained by the Carrier and for which the Government has agreed to reimburse the extra premium under this section.

## **8.16 Application of COGSA**

8.16.1. Incorporation. The United States Carriage of Goods by Sea Act (COGSA) 46 U.S.C. 1300-1315 is incorporated into this contract and shall apply to the ocean transportation of all goods (including goods in containers stowed on deck, which shall be considered as goods stowed under deck) under any booking with the same force and effect as if the Act applied to such carriage by express provision therein; provided, however, in case of loss, damage or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to the period within which notice thereof shall be given the Carrier or as to the period within which claim therefor shall be made or suit instituted.

8.16.2. Liability. For the purpose of interpreting Section 4 of COGSA "Limitation of Liability," for all cargo, the limitation of liability set out in Section 4 of COGSA shall apply to each package, and for cargo not in packages to

each measurement ton of cargo within the container. The carriage of cargo under any booking issued pursuant to this contract shall not be deemed or construed to be the carriage of cargo pursuant to special terms and conditions as provided for in Section 6 of COGSA; and nothing in this contract is intended to relieve the Carrier or the vessel from liability for loss or damage to or in connection with the goods arising from negligence, fault or failure in the duties and obligations provided by COGSA or to lessen such liability otherwise than as provided therein. The Carrier shall be liable as a common Carrier by land for any loss of or damage to cargo while being transported under this contract between any inland origin and the vessel's side and between the vessel's side and any inland destination.

### ***8.17 Scope of Voyage (Liberties)***

8.17.1. Determination of the Master/Carrier. In any situation, whatsoever or wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the Carrier or Master of the vessel is likely to give rise to capture, seizure, detention, damage, delay, or disadvantage to or loss of the vessel or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to begin or continue the voyage or to enter or discharge, or to give rise to delay or difficulty in arriving, discharging, or leaving the port of discharge or the usual place of discharge in such port, the Master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the Government's goods may, upon notification to and with the consent of the Contracting Officer, discharge the goods into another port, depot, lazarette, craft, or other place, or retain the goods onboard until the return trip or until such other time as is deemed mutually advisable. This notice Officer shall include, but may not be limited to, the planned port of discharge of the cargo and any measures planned to protect the cargo.

8.17.2. Contracting Officer's Direction. If the Contracting Officer determines that the planned disposition of the cargo is not in the Government's best interest, the Carrier shall comply with the PCO's direction to the Carrier to divert the cargo to a port of the Government's choice and to make any other arrangements for the cargo the PCO deems necessary to protect the Government's interest.

8.17.3. Equitable Adjustment. The Carrier may be entitled to an equitable adjustment to the Contract for actions taken pursuant to the PCO's direction. However, for any services rendered without prior notice to and consent of the Contracting Officer, the Carrier shall not be entitled to an equitable adjustment. In no such case shall freights be payable until the goods are delivered to the named destination on the booking.

8.17.4. Responsibility. In any event, the Carrier shall at all times be responsible to assure the security and protection of the cargo until relieved of such responsibility by the Government or its designated agent.

8.17.5. Compliance with Government Direction. The Carrier, the Master, and the vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof (or by any committee or person having, under the terms of the war risk insurance on the vessel, the right to give such orders or directions). Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The vessel may carry explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

### ***8.18 Exception Force Majeure***

An act of God, enemies, fire, restraint of princes, rulers of people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this contract are mutually excepted. The vessel shall have the liberty to deviate for the purpose saving life and property, to tow or to be towed, to sail with or without pilots, or to go into dry dock or into ways with or without cargo on board. However, in no case shall

the Carrier be entitled to extra compensation for such a deviation and the Carrier shall not be relieved of responsibility for delivery of cargo to its original destination.

## **8.19 Strikes**

8.19.1. Loading Port. In the event the vessel or loading of the vessel is delayed by reason of strike or stoppage of work, the Carrier reserves the right at the loading port to dispatch the vessel with such portion of the cargo as may then be on board, or if no Government cargo is on board, to delay or cancel the voyage.

8.19.2. Discharge Port. In the event the vessel or discharge of the vessel is delayed by reason of strikes or stoppage of work, the Carrier reserves the right at the discharge port to discharge the cargo still on board or with the approval of the Government to dispose of the cargo or any portion of the it at the Government's risk and expense.

## **8.20 Amended Jason Clause**

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a sailing vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if such sailing vessel or vessels belonged to strangers.

## **8.21 General Average**

General Average shall be adjusted, stated and settled, according to York-Antwerp Rules 1974 as amended to the date of this contract, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by those Rules, according to the laws and usages at the Port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship.

## **8.22 Liens**

8.22.1. Seizure of Cargo. The Carrier agrees that it will not assert any type of lien, including a maritime lien, on any cargo shipped by the Government under this contract. The Carrier further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S. or any foreign country. The Carrier agrees to insert this clause in all subcontracts at any tier and to expand any resources necessary to expeditiously enforce the provisions of this clause against such subCarriers.

8.22.2. Freight. There shall be no liens, including maritime liens, asserted on any freights payable by the Government under this bill of lading. The carrier agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subCarriers.

## **8.23 Damaged to Equipment**

8.23.1 Loss of or Damage to Carrier Equipment. Should a container, chassis, or any other piece of Carrier equipment be damaged by act of the Government, its agents, employees, or Carriers while such Carrier equipment is in the custody of the Government, its agents, employees or Carriers, the Government shall repair or reimburse the Carrier the least of the following: the reasonable costs of repairs; the fair market value immediately prior to the damage; or the depreciated value on the Carrier's books. The Carrier will assign to the Government any rights, causes of action, or other claims that the Carrier may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this paragraph unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned to the Carrier.

8.23.2 Damage to Carrier Vessel or Vessel Equipment. Should the vessel or its equipment be damaged by act, neglect or failure of equipment of the Government, its agents, employees, or Carriers in loading or discharging the vessel, the Government shall reimburse the Carrier the reasonable costs of repairs and the Carrier will assign to the Government any rights, causes of action, or other claims which the Carrier may have against third parties with respect to such repairs. In the event that any damage should occur to the vessel or its equipment as a result of the joint fault of the Carrier and the Government, payment for such damage shall be apportioned pro rata in accordance with the respective degrees of fault. The Government shall not be liable for the repair of any damage under this paragraph unless notice specifying such damage and the name(s) of the party or parties causing such damage shall have been given to and acknowledged by the Government or its authorized representative as soon as possible after the occurrence of such damage, or in any event before the vessel leaves the berth or anchorage where the damage occurred, and provided, further, that the Government shall not be liable for the repair of any damage under this paragraph if such damage is caused by a Carrier of the Government unless demand first is made upon such Carrier by the Carrier and payment therefore has been refused.

8.23.3 Loss or Damage to Government Equipment. The Carrier shall be liable for loss of or damage to Government containers and chassis while in the Carrier's custody to the same extent that the Government is liable for loss of or damage to the Carrier equipment while in the Government's custody. The Carrier will not procure insurance coverage on Government containers and will not be liable for any loss thereof under circumstances covered by the Carrier's war risk insurance on its own containers.

8.23.4 Damage Claims. Claims submitted under this Section shall be filed with the Military Surface Deployment and Distribution Command (SDDC), Staff Judge Advocate, 200 Stovall St., Hoffman II, Room 12N67, Alexandria, VA 22332-5000.

End of Special Terms and Conditions.

## **9.0 List of Attachments and Addendums**

Attachment 1 – Acronyms and Definitions  
 Attachment 2 – PowerTrack Business Rules.  
 Attachment 3 – City Groups  
 Attachment 4 – USCG Uninspected Towing Vessel Safety Regulation.  
 Attachment 5 – Performance Requirements Summary

Addendum to 52.212-1 Enclosed  
 Addendum to 52.212-4 Enclosed

52.212-1 ADDENDUM**Addendum FAR 52.212-1  
Instructions to Offerors**

Submission of Offers, Paragraph (b) is hereby amended as follows:

Special Notes to Offerors:

A. Written and electronic submissions are required in response to this solicitation.

B. Proposals submitted by offerors will not obligate the Government to determine a competitive range, conduct discussions, or solicit or entertain revised or Final Proposal Revisions (FPRs).

C. The Government reserves the right to incorporate all, part or none of the offeror's written proposal into the resultant contract.

D. A Pre-proposal Conference is tentatively scheduled for 22 October 2004, the exact date, time, and location will be provided upon release of the final RFP (tentatively 15 October 2004). Fax written questions or items for discussion by close of business, 8 October 2004, to the attention of Ms. Robin Thomas and/or Mr. William Mills at (703) 428-3325 or email to: [thomasrobin@sddc.army.mil](mailto:thomasrobin@sddc.army.mil) and [millsw@sddc.army.mil](mailto:millsw@sddc.army.mil).

**I. SUBMISSION OF OFFERS**

A. In response to this request for proposals (RFP), an offeror must mail or hand-deliver a written proposal in accordance with Part III of this section, titled Written Proposals, including all representations and certifications to the address listed in Paragraph D.1. of this section.

B. The offeror must also electronically submit proposed rate offers, pro-forma schedules vessel specifications using the Carrier Analysis & Rate Evaluation System, Service Module (CARE II SM) The CARE II SM is accessible through the Internet using the CARE II System Center Web Site at the Internet address listed in Section II, paragraph A. It is anticipated that the period of performance for this contract will be a one-year base period with two (2) one year option periods.

C. Offerors intending to respond to this solicitation must provide a written request for a CARE II user account in accordance with Section II, Paragraph C. All of the information necessary to complete the electronic submission of the offer can be found at the Internet address listed in paragraph Section II paragraph A. The data required to be submitted through the CARE II SM database in support of a technical capability determination consists of two (2) main sections:

1. Service Profile
2. Vessel Profile

D. The written and electronic proposal must be submitted to the addresses listed below and must arrive prior to **1630 hours (4:30 PM) Eastern Standard Time 22 November 2004 and remain firm for 120 days**. The written portion of the offer must be enclosed in a sealed envelope marked "Request for Proposal No. W81GYE-04-R-0053. The offeror's name and address should appear in the upper left-hand corner, and the envelope should be enclosed in a second envelope that must be sent to the address listed in below.

1. The written proposal must be sent to the Contracting Officer at the following address:

Military Surface Deployment and Distribution Command



Attention: SDAQ-G (Mr. William Mills)  
Hoffman Building II, 200 Stovall Street, Room 12S67-64  
Alexandria, VA 22332-5000  
FOR DELIVERY ONLY TO ACQUISITION DIVISION

2. Any and all questions may be directed to:

Ms. Robin Thomas  
Telephone number (703) 428-2061  
FAX number: (703) 428-3325  
E-mail address: [thomasrobin@sddc.army.mil](mailto:thomasrobin@sddc.army.mil)

E. If negotiations are conducted and Final Proposal Revisions (FPRs) are requested each offeror will be notified by e-mail, fax or telephone of the date and time. Each offeror must submit FPRs to the electronic and written proposal to the addresses listed above in Paragraph D Sub-paragraphs 1 and 2.

F. Company facsimile number and email/internet address must be provided with all offers.

G. Submission of Rates. All rates offered must be submitted in accordance with the instructions specified in Section II below.

H. All offerors are required to submit their standard carrier Abbreviation Code (SCAC) with their proposal.

## **II. ELECTRONIC OFFERS**

A. The electronic proposal must be submitted using the following Internet address:

<https://care2web.eta.mtmc.gov/care/caremain.asp>

The following Internet address may be used as a backup:

<https://care2web.eta.mtmc.armv.mil/care/caremain.afip>

B. Care II Service Module Application Instructions

1. Carriers submitting an offer of service for any trade route are required to complete the forms contained in the CARE II SM. Instructions for this application can be obtained from the CARE II System Center Web Site.

2. Carriers must submit schedule, service and vessel information on ocean service in the CARE II SM associated with each trade route for which rates are offered.

3. Carriers should enter the service that provides the shortest transit the carrier is willing to offer between the origin and the destination.

4. Note that a rate offered with the value of 0.00 (zero) will be considered as no charge for service by the Contracting Officer.

5. All basic container rates, unless otherwise specified, are to be offered in dollars and cents per container (lump sum).

6. All basic breakbulk rates, unless otherwise specified, are to be offered in dollars and cents per measurement ton (MT) of 40 cubic feet manifest measure, and are based on liner terms

7. Changes to rate offers can be made to any contract Rate Submission (\*) as identified in the CARE II SM. The offeror must enter changes to offers in dollars and cents per MT or per container or as otherwise specified, in the appropriate line item field. Offers may be changed/revised prior to the expiration of the time and date set for receipt of initial offers/proposals or the time and date specified for final proposal revisions.

8. All reports can be printed using any local or network printer. The reports are formatted to fit on 8 by 11 paper.

9. Carriers must immediately notify the Contracting Officer in the event difficulties in accessing the CARE II SM data is encountered. If carriers are unable to access the CARE II SM to enter the required data in sufficient time to be received by the Government by the date established for receipt of proposals, they may request authorization from the Contracting Officer to submit a hard copy containing the required proposal data. Offerors are advised that in the event submission of hard copies is authorized, timely submission of offers is still required in accordance with the terms of the solicitation. In the event both electronic proposal and hard copy proposal are received in a timely manner from the same carrier, the electronic proposal will take precedence.

#### C. Request For CARE II Service Module User Account.

1. The CARE II Service Module user account will consist of a User ID and Password, each unique to the individual offeror. The offeror is required to add its Standard Carrier Alpha Code (SCAC) to the list of information required to obtain a CARE II SM account. The Carrier Analysis & Rate Evaluation Service Module (CARE II SM) application will be provided only upon written request. Requests for the application must be submitted to the Contracting Officer in the following format:

(Company Name) hereby requests a user account(s) be  
established to allow access to the CARE II System Center to  
facilitate the solicitation of proposed service offers under  
Request for Proposal No. W81GYE-04-R-0053  
Individual Name  
Individual Name  
(Signed by Authorized Company Representative)  
Name of Company Representative  
Title of Company Representative  
Telephone Number:  
FAX Number:  
Email Address:

2. Upon receipt by the Contracting Officer of the request, the CARE II Service Module user ID and password will be made available to the requesting party within two (2) working days via facsimile or e-mail. Facsimile requests may be made to 703-428-3325 to the Contracting Officer's attention. The CARE System Center can be accessed through the Internet at the Internet address identified in Section II, paragraph A.

#### - Hardware and Software Requirements

1. The minimum hardware and software requirements for the operation of the CARE II SM application are:

Pentium or higher processor  
Windows 98, Windows NT, or Windows 2000  
64 MB RAM (128 MB recommended)  
50 MB hard disk space  
Super VGA monitor with 800 x 600 resolution  
Microsoft Mouse or compatible pointing device

2. In order to access the CARE II SM from the web, offerors must have Internet access and the following minimum web browser specifications:

Microsoft Internet Explorer 4.5 (Internet Explorer 5.5 recommended).  
 Netscape Navigator 4.5 (Netscape Communicator 4.76 recommended).  
 Browser must support 128-bit encryption for secure transmission of data

### III. WRITTEN PROPOSALS

In addition to the CARE II SM data required by Section I, paragraph B., of this addendum, all offerors must submit written proposal material as described below in the quantities stated:

**VOLUME I** - Executed RFP Documents (Submit Original Documents and one (1) copy)

**VOLUME II** - Technical Capability Narratives (Submit 4 Copies)

Description of reliability of service, equipment, management approach, and Electronic Data Interchange capability.

**VOLUME III** – Past Performance Information (Original and one (1) copy)

NOTE: Pricing information is not to be included in offeror's written technical submissions. Pricing information is to be provided through CARE II SM as stated above in Section I, paragraph B. Instructions for submitting Volumes I – III are as follows:

**A. VOLUME I (Executed RFP Documents)** All offerors shall submit all documents requiring signature or completion by the offeror. Each offeror shall complete applicable fill-ins and signatures, and submit the original documents listed below. An authorized official of the firm shall sign the offer and all certifications requiring original signature.

1. Standard Form 1449, including acknowledgment of amendments, if applicable.
2. Clauses 52.212-3, Offeror Representations and Certifications – Commercial Items

**B. VOLUME II (Narratives of Technical Capability)** All offerors shall be required to submit written narratives describing their technical capability. Narratives must explain how their proposal will meet all requirements established in the solicitation. Each narrative will not to exceed fifteen (15) pages in no smaller than 10-pitch font exclusive of graphs and charts. Proposals should address, at a minimum, the sub factors as contained in Section III, Paragraph G., of the Addendum to 52.212-2.

**C. Volume III (Quality of Past Performance Information)**

1. The Contractor shall provide a listing of current or recent clients (contracts within the last three years). The submittal must list the Company name, POC, phone number, and Contract Number (if applicable), emphasizing customers for whom it has made shipments into domestic port areas. The Government may contact those firms and individuals named to verify information and gather additional information as it relate to on-time delivery, cargo loss and damage history and other performance criteria. Further, the Government may contact additional sources of information regarding the contractor performance record or utilize its own performance database or both. Offerors are reminded that while the Government may elect to consider data not included in the proposal but obtained from other sources, the burden of providing thorough and complete performance information rests with the Offeror. Additionally, the Government may rely upon internal records of an offerors past performance as available.
2. The offeror should provide information describing the ability to meet performance requirements of previous contracts with the government and any awards received either civilian or military.

### IV Mileage Rates

1. The Contractor receiving award any CONUS mileage rates must provide proof of "PC\*Miler" license.

2. Utilization of the mileage rates in a one-way application is limited by the computer systems engaged in applying rates; therefore, the offeror is cautioned to bid their mileage rates consistent with their operational capabilities. Therefore, the carrier must provide one-way mileage rates that will allow them to perform the requirement. If a particular point becomes a recurring requirement, a single factor rate should be established. Normal rule of thumb is that if a requirement recurs at the rate of once every sixty (60) days or is estimate to occur six (6) times in a year, a single factor rate should be established.

## V. REJECTION OF OFFERS

The Government reserves the right to reject any or all offers in whole or in part.

## VI. APPLICABLE TARIFFS

As specified herein, the offeror must submit with its offer information sufficient to allow proposal evaluators access internet web sites containing all effective commercial tariffs published by the offeror for all trade routes for which service was offered under this solicitation.

(End of Addendum)

### 52.212-4 ADDENDUM

**Addendum to 52.212-4 (c) Changes:** Changes in the terms and conditions of this contract may be made only by written agreement of the parties excepted for items/provisions delineated in the contract as within the authority of the CO. Where the Government requests a change requiring written agreement of the parties, the parties agree to undertake best efforts to affect the requested change. The Government may make changes in the terms and condition of a delivery/task/shipping order issued under the contract in writing on a unilateral basis.

- (1) If any such changes causes an increase or decrease in the cost of, or the time required for performance of any part or the work under this contract, whether or not changed by the order, the CO must make an equitable adjustment in the contract price, the delivery schedule, or both and shall modify the contract.
- (2) The Contractor must assert its rights to an adjustment under this clause within thirty (30) days from the date of the receipt of the written order.
- (3) If the Contractor proposal includes the cost of property made obsolete or excess by the change, the CO shall have the right to prescribe the manner of disposition of the property.
- (4) Failure to agree to any adjustment shall be a dispute.

**Addendum to 52.212-4 (i) Payment:** PowerTrack shall be the primary method of payment for this contract, however, for billable items outside the ability of PowerTrack, FAR 52.212-4(g) is in effect for invoicing.

(1) Entitlement. Freight shall be earned only upon delivery of the cargo at the ultimate destination set forth in the Shipping Order or applicable amendments thereto. Freight shall consist of the sum of all payments due for services actually furnished in accordance with the Shipping Order calculated at the rates set forth in CARE-SM II System.

(2) Withholding of Payment. If, after delivery of the cargo or container and unstuffing by the Government, there is any damage to or shortage of cargo not definitely known to be the fault of the Government or its agents, and it is considered by the Contracting Officer that withholding of certain monies is necessary to protect the interests of the Government pending final determination of the amount of shortage or damage and the Carrier's liability therefore, the dollar amount of such shortage or damage may be estimated and withheld from sums owing to the Carrier by the Government under any Shipping Order. Likewise, the Government may recover overpayments of freight and may recover charges paid to the carrier for services and supplies.

(3) Reimbursement. All charges and expenses incurred for the account of the Government as provided in this Contract and which are not paid directly by the Government or by the consignee shall be paid by the Carrier, which shall be reimbursed upon the presentation of properly supported invoices, including, but not limited to, Carrier's Interchange Receipt and COR certified invoices.

(4) Payment. Unless otherwise provided herein, payment shall be made on the basis of freight earned as computed in accordance with paragraph (1) above. In accordance with the Prompt Payment Act, all payments earned on shipments will be made after a) receipt of a proper invoice, in accordance with the procedures outlined above, or b) evidence of delivery as described above, whichever occurred later. The failure of the Government to provide a proper manifest in a timely manner shall not preclude the Carrier from submitting a proper invoice upon delivery of cargo as set forth above.

(i) Electronic Payment – Carrier Payment Automated fund transfer (AFT) is the required method of payment for this contract. Carrier not yet authorized AFT must provide bank and account information necessary to implement AFT.

(ii) Management Reform Memorandum 15 (MRM 15) Payment Method. MRM-15 alternate payment procedures. During the term of this contract, the (POWERTRACK), shipping instruction (EDI 304), plus carrier lift (EDI 315) reports will be the basis for effecting payment to Carriers. Electronic Carrier Payment, MRM15 Payment Procedures (see Attachment 1) will be implemented 30 days from the effective date of the contract. The automated payment procedures require the carrier to become a certified PowerTrack carrier. The POC at US Bank may be reached at 1-800-417-1844.

End of Addendum